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NEOLIBERALISM PHILOSOPHY IN LEGAL REGULATION AND HUMAN RIGHTS POLICY AS DIRECTION TO HANDLE WITH SOCIAL INEQUALITY IN COMPANY'S PURPOSE

Summary. *Our research lies in the field of correlation between the companies' development and philosophy of neoliberalism, philosophy that stood behind the policies of Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States. The common significant feature of the above was government spending reduction and, as logically follows, reduction of*

government active involvement; this led to the policy of privatisation, market deregulation, lesser budgets and reduced numbers of government officials.

Any opinion on neoliberalism inevitably depends on one's ideology, it cannot be purely objective. This is what makes it more controversial and less "scientific", but also more interesting. This question in itself shows us conflict between two common views: that focus on shareholders' profit slows companies' development, and an opposing one, suggesting that it enhances efficiency. There is also a third part of it: connection of neoliberalism to social inequalities. Yet the latter are hardly connected to efficiency and development; these are separate issues. Economy may be strong and fast-developing, yet having a great social inequality (as it often happened in 19th century), it may be based primarily on social policies, and even seem strong, but bear a flaw that would eventually cause its downfall (as proved by Soviet Union), or it may try to focus on both development and society (as many countries try to do now). Every combination has its own strengths and weaknesses; here is when an ideology becomes important, since ideology sets a list of priorities, thus allowing to decide which one is "better". Although most academic works tend to avoid such decision, it becomes extremely important when a question of governmental policies arise, so it should not be ignored. Another important mental aspect are moral standards of a particular society; should at least those be common, they could have become a ground for standardisation. But, as philosophy of moral relativism suggests, they are not, [6] so current local ideology and practical considerations remain chief reasons to make a choice.

Key words: *philosophy, neoliberalism, ideology, company's development, profit, shareholders, inequality.*

Statement of the problem. In spite of the fact that the last decade of the XX century. passed under the sign of neoliberal globalization, which included the creation of a world financial and economic system, the proclamation of global principles of democratic governance, the spread of unlimited influence international financial institutions, the elimination of the national interests of a number of states, the inter-corporation of national elites nowadays, discussions are underway about the concept of neoliberalism and its nature.

Analysis of recent researches and publications. Socio-philosophical doctrine concerning the theory of social ideals (wealth and values) is represented by J. Locke, B. Constant, G. Spencer, M. Rothbard, M. Friedman, L. von Mises, J. Gray, B. Greaves, F. von Hayek and A. Pankovsky turned to the study of liberal concepts. Neoliberalism in the legal regulation was describeв by O. Ashurkova, I. Wallerstein, M. Kravchenko, A. Lutsky, V. Mamutov, O. Chertsova, I. Yakoviuk. Neoliberalism as a category of legal ideology characterizes A. Lutsky. Neoliberal ideology as negative integration was based, considered in his works I. Yakoviuk. V. Kostytsky, notes that the specificity of law is that it not only expresses but also protects universal human values and civil rights, consolidates the system of state mechanism and the combination of neoliberalism must be taken into account to build the rule of law. O. Chertsova noted that the weakening of certain state mechanisms causes a further exacerbation of the global systemic crisis, which undoubtedly affects the development of democratic institutions of the neoliberal model.

Formulation purposes of article (problem). A study of efficiency of neoliberalism philosophy applying with legal regulation individual freedom in regard to company management policies and according to modern development of society.

The main material. We shall now turn to our question: does neoliberal focus on the rights of shareholders distracts companies from development and reinforces social inequality, or does it allow to allocate resources in a reasonable way? In order to decide, if something is efficient or not, there should be a measure, a goal that needs to be achieved. With regard to corporate policies there may be three main goals: fulfilment of company's purpose, benefits it receives in a long term, and benefits state receives from the policies that it adopts.

Company's purpose, or, in other words, the reason why it was created, is to make profit. It means to organise labour in a way that minimises costs, energy and resources and maximises outcome. In fact, it has no purposes other than achieving Kaldor-Hicks efficiency, a situation where, after reaching equilibrium between profit and damage, at least one side is left in better position than it was; being a legal fiction, a "company" itself cannot make any choices regarding morality or social benefits – it simply lacks emotional capability to do so [5]. Its nature of an entity, existing separately from the people it is owned and governed by, was considered throughout 19th century (which resulted in introducing limited liability), and was finally established in *Salomon v Salomon* case [4]. It is up to people currently in control (management, shareholders etc.) to make it act one way or another, and their motivation is usually based on acquiring more profit, privileges and power. Thus, the market is governed by what Adam Smith had called "the invisible hand", a natural regulation of survival and interest. Taken that, it is only logical to focus on shareholders, who have to be more interested in company's success than stakeholders with their fixed jobs and salaries. It is somewhat different with management, especially management that is employed for a long term; the longer is their employment, the more similarities are there between them and shareholders in terms of company's well-being. Their motivation – profit, privileges and power – starts to depend on a common source, which is company's performance. It is true that humans do not always act in rational pursuit of wealth, but they mostly act in rational pursuit of their priorities, among which these three are very common.

Focus on shareholders may appear controversial in a long term. It depends on a type of a company; there is a huge difference between Anglo-Saxon dispersed shareholders and Continental large shares. The former are constantly engaged in a process of buying and selling their shares; they usually take no active part in governance, and only the biggest minority shareholders are able to influence company's policy. That makes an average shareholder unconcerned with long-term perspectives, and such shareholder's pressure may result in decisions profitable in a short term, but generally damaging (like, for example, taking loans to increase monthly income without sufficient resources to cover those in the future) [5]. This is indeed a danger, and may result in failure: bankruptcy or takeover by a more successful business. But competent management is aware of such dangers and is supposed to find a balance between short-term and long-term perspectives.

Situation is different with Continental shareholders (and those of post-command economies). They hold large shares (up to 100%) and do so for years, if not decades. This makes them much more interested on success of their business, and they are not focused on getting more profit in a short term, if that might lead to future problems. They also exercise enough control over their companies not to require protection from the state; instead, state focuses on protection of minor shareholders and stakeholders. The argument against prioritising shareholders in this case might be that they may lack expertise for governing their business, especially if it is big and continues expanding. The answer is that it is possible, and for that reason competent management is hired; yet to exercise his abilities and give necessary advice a manager hardly needs special state protection, since there are terms he agreed to when signing a contract. In this issue it is possible to agree with F. Hayek, who believed that excessive state intervention in the economy still is a great problem for many countries, representing "the road to slavery."

As for the greater picture where state and its interests become involved, focus on shareholders also serves its purpose. Companies' orientation on income creates a healthy competing environment: best businesses with the most to offer their customers thrive, while poor performance results in collapse. In such environment initiative, innovation and skill are rewarded, and consequences of incompetence and inability to provide results are grave enough to be a strong motivation for development. This, in turn, facilitates growth of economy and improvement of services' and goods' quality. There are casualties, of course: takeovers happen, some working places are lost, many people are paid less than they expect, many are dissatisfied with their working conditions. Another danger is a possibility of crisis, or even of general collapse similar to Great Depression. But more regulation is not an answer: it makes whole system less flexible, less able to adjust to market realities and less favourable to freedom of contract, while giving an illusion of safety. An illusion – because in economics, especially where great amounts of money are involved, there is no absolute security or precise calculation of risks. As it was well described by Nassim Nicholas Taleb in his book *The Black Swan: The Impact of the Highly Improbable*, even the slightest, most improbable and unpredictable detail may result in extreme growth or quick downfall. Besides, there are some positive consequences even in case of a crisis: it serves as a lesson from which both businesses and states may learn and use that experience to avoid future mistakes.

That by no means should be understood as an argument for a completely unregulated market. State should not forget its own interests, as concerned as it is for well-being of business. This is when focus on shareholders allows it to reach a balance between total control and complete market freedom, which may disregard national interests. Leaving shareholder entitlements in priority, state acquires a regulation tool which does not infringe on freedom of contract, but at the same time is effective: a financial one. Government should itself act as a management, choosing the way to invest that would be profitable, encouraging business in important areas and seeking technological and trade advantages over other countries. Such policy proved effective, for example, in South Korea. There is also no need to overly focus on social responsibility, because companies are going to do it themselves. It is useful from commercial point of view: more clients are attracted to the company that displays socially responsible behaviour. Thus, "priority of shareholder entitlements" appears to be an efficient way to organise corporate governance.

Free market and concentration on profit may cause social inequality, because not everyone is equally skilled, motivated or even simply lucky enough to enjoy favourable circumstances. But although there is inequality, there is no injustice; the system is impartial, based on individual merit, ability to obtain and hold advantage, strength of character and, partly, chance. Being a descendant of a wealthy family gives certain bonuses, but does not guarantee success. It is also possible to improve one's social standing, if enough effort is put into it. So, the question if focus on shareholder entitlements is efficient may be answered positively.

The next part of our research is dealing with the problem of directors remuneration growth. It is believed that the use of diversity as an employment policy may slow this process down and make it controllable.

Diversity seems to be a popular topic nowadays, which is surprising taken that there are no legal boundaries holding back potential able candidates. So, what is the impact of diversity on board of directors, if any, and is diversity in itself really a way to increase efficiency, or merely a political agenda? First of all, we would like to point out a difference between "hiring the most able specialist" and "hiring a woman". In first case we are focusing on merits and leave out candidate's gender, personal preferences and other non-essential things that have (or, at least, legally supposed to have) no impact on professional abilities of a director. In second, focus rests specifically on gender. Same applies to other kinds of diversity, for example, ethnical or religious – all those characteristics that are typically irrelevant to director's duties. But, of course, in reality distinction is rarely that pure and simple; even analysing statistics, we risk to be misled if our approach is too direct. Figures are important, but they mean nothing without reasons behind them.

Another question is increased director's remuneration. Is it, in fact, a critical problem that should be dealt with? And if so, what is the connection between remuneration and director's gender (ethnicity etc.)? Here it is appropriate to start with the fact that by law [2] there may be no differences in payment based primarily on gender, ethnical, religious or other identity – that is direct discrimination, which is illegal and thus not practiced by business. This brings me to conclusion that such difference, if it exists, must be based on some other factors, for example, women's behavioural specifics or level of competence.

So, what are perceived advantages of having female directors instead of male? A study by Renée B. Adams and Daniel Ferreira shows that this is a controversial question. In some particular matters, including level of attendance, female records are indeed higher. But in other, for example, takeover defences, women in average show themselves less successful. The reason for that, as the research suggests, is positive correlation between number of women on board and overall level of monitoring: females often hold positions in monitoring committees, and their presence enhances control, which has a positive impact on performance only if it is a company with weak shareholder rights and poor governance [1]. Otherwise, additional monitoring may do more harm than good. This study is criticised by Pananda Pasaribu in *The Examinations of Board Chairman Characteristics and Board Diversity: Evidence from the UK Listed Firms* for an endogeneity problem; in this work several other researches are examined, and yet the author comes to conclusion that "finding supports the first hypothesis, in which there might be no association between female directors and firm performance" [3]. There is some difference with regard to the non-executive board, but women there have significantly less impact on company's day-to-day governance. The author also suggests that critical mass of females on board and reaching "balance composition between female and male on the board" may change the situation, and there are hints to such possibility in some of the studies

[3]. Still, there is no clear reason to artificially increase female presence by granting them any competition advantages like quotas or special diversity politics.

Stepping away from statistics, it is interesting to examine features of a woman who is eligible for becoming a director. It is a common view that currently there is a prejudice against women in high positions, and that results in smaller numbers of female directors. Assuming, for the sake of an argument, that it is so, should not a woman who made her way up to directors' table despite all odds become tougher and better at her job than her male colleagues? Having one such woman on the board might therefore prove more beneficial for the company than having several middle-quality female specialists (as artificial quota might require). As shown by the example of Norway, some measures may bring an unexpected results: after introducing a quota for public companies Norwegian government faced numerous cases of public businesses changing into private. There is nothing unnatural in such response to forcing a controversial and unnecessary political agenda at an area where efficiency and pragmatism are the key.

It is hard to tell if increased female presence would somehow change directors' remuneration. Number of women holding positions in compensation committees is not enough to show any statistical differences [1]. It is also unclear why would they make any difference in theory: females, just as males, seek profitable jobs. Besides, current state of affairs is far from critical: although director's remuneration has grown considerably over the last thirty years, it is still only a small, affordable percent of company's general income.

Insights from this study and perspectives for further research in this direction. Overall, there are no real reasons for changing the law or apply any additional measures to increase diversity of boards. Doing so means lowering the standard, assuming that women cannot achieve high positions on their own and introducing the same inequality we have been trying to avoid, but this time directed at men. Women nowadays have every possibility to receive education, build their career and make any other life choices they wish. There are still many who are not prioritizing career, thus losing their chance to get to the top, but that is a personal decision to make. As for efficiency, there are minor, not revolutionary differences in performance of a company, and not always those are advantages. There is extremely little chance that replacing men with women would solve any major problems; good results are a matter of competence and of character. Some may say that a female director is able to better understand female clients. That is also arguable: a great difference in psychology exists between women of different backgrounds, interests and jobs. There is no guarantee that a female CEO of a company selling cutlery would relate to problems of housewives, or that a female politician would understand a female factory worker. The only thing that should determine if a particular woman should be a director is her ability to show the best possible result; and making her way up is simply one of the tests she must pass.

Turning to the ideology of neoliberalism on which our analysis is based, we can thus suggest that the gender principle in the pyramid of values, especially with regard to diversity in company management policies, does not occupy a predominant place. Individual freedom and the principle of the free market are arguably more important. Moreover, this principle of gender-based personnel policy, in our opinion, creates more problems than it resolves, while free competition allows those to be resolved in a natural way.

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