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LABOR REFORM IS SUBMITTED TO THE SENATE

- The Labor Reform was passed in the Chamber of Deputies, with a general rejection from the opposing political parties. In our opinion, the approved text is more detrimental than the original bill.

- The most negative aspect of this initiative, among many others, is the end of strike replacements. In the way it is stipulated, the bill endangers the freedom to work, the property right, the management freedom of the own company and the right of the citizens to have valuable goods and services available. Furthermore, this aspect of the reform will entail a deterioration of the labor climate and loss of productivity.

The Labor Reform has been passed by the Chamber of Deputies, relying only on the votes of the Nueva Mayoría (New Majority) and five votes from independent deputies. The right-wing Alianza (Alliance) rejected this reform, which, as we have stated several times, is detrimental not only to the country, but to the workers themselves.

In general terms, the approved reform is similar to the government's initial bill, with some amendments that, in our opinion, contribute adversely to the bill. Although the relevant role that the Labor Office was going to play was slightly attenuated, the fact of eliminating the peaceful protest definition and no longer considering the union leaders' use of the force as anti-union practices are evident bad signals. Instead, when considering any act and omission that may endanger the union freedom as an anti-union practice of the employer, the rule is subjectivized, thereby making it even more difficult for the employer to legitimately reward the effort of individual employees. The addition of the word omission seems especially complex, since the concept remains excessively open.

Considering that it has been publicly criticized by the CUT union federation leaders themselves, it also seems very negative that, in the end, the figure known as "the morning after union" was not eliminated, -which stipulates that workers will benefit from labor protection when taking part in the formation of a company or intercompany union, starting 10 days before the first shareholder meeting until 30 days after the meeting was held, without exceeding the 40-day labor protection period. At the same time, the definition of minimum services, which must be delivered even during the strike, was given a wide range of discretionality from the authority, which generates great uncertainty in the company's management.

The following table shows the main amendments to the bill during its proceeding at the Chamber of Deputies:

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BILL	APPROVED TEXT
It proposes to eliminate the figure of the morning after union that is present in the current law, which allows generating retroactive labor protection.	This figure is reinstated.
Unfair practices from the employer can only be considered when there is an objective responsibility on his part.	It picks up the current wording of the Labor Code, stipulating that the acts and omissions endangering the union freedom will be penalized.
It puts forth that large and medium companies shall be obliged to give periodical and relevant financial information available to the trade unions that have the right to negotiate in these companies.	The expression "periodical and relevant financial information" is eliminated, delimitating the content of the information, and indicating that it corresponds to the balance sheet, the profit and loss statement and the audited financial statements if there were any, in addition to the information that the companies are obliged to deliver to the SVS (Superintendence of Securities and Insurances).
The bill proposes two extension hypothesis: in relation to employees who join the union, the extension is automatic. However, in relation to the extension for nonmember employees, it always requires an agreement with the union; thereby, the extension of the same benefits to non-affiliated workers is configured as an anti-union practice if it is done unilaterally by the employer.	An indication that does not modify the hypothesis of the benefits extension is introduced. It only indicates that, when extending the benefits to nonmember employees, 100% of the ordinary union dues shall be paid for the worker.
Strike is defined as a right that workers should exercise collectively and peacefully.	The feature of the strike being a right that should be peacefully exercised is eliminated.

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Minimum services are defined as those allowing to provide the essential operations to prevent actual and irreparable damage to the company's material assets, facilities or infrastructure or causing severe environmental damage or health damage. This is carried out by one or more emergency teams provided by the union with its affiliated employees. Furthermore, they can be specified either before or during the collective bargaining.	A broader definition of minimum services is preferred, which implies providing the strictly necessary minimum services to protect the company assets and facilities and prevent accidents, in addition to guarantee the delivery of public utility services, basic needs of the population and guaranteeing the prevention of environmental or sanitary damages. Moreover, it indicates that emergency teams and minimum services shall be specified before starting the collective bargaining, but this is not clear, because a remaining subparagraph states the hypothesis that services should be specified afterwards.

END OF STRIKE REPLACEMENTS

If we were to choose the most harmful aspect of this reform, it would be no doubt the end of strike replacements and the impossibility for the employees to distance themselves from the strike if they consider it pertinent.

In that regard, it is interesting to analyze some aspects and implications of the right to strike, which is recognized in our Constitution, and therefore, it is not questioned. Employees may and should have the right to stop working if they consider that they are getting unacceptable conditions, thereby accepting of course that if they do not go to work, they cannot receive remuneration. It is important to mention, in the first place, that the bill undermines this right, because in the future only unionized employees would have the right to strike, with no possibility for organized groups of workers to collectively bargain to go on strike. This fact infringes the Constitution, which gives the right to collective bargaining to the employees, not to the trade unions.

Likewise, the legislator has a weighing responsibility when reconfiguring the right to strike, a right that he must make compatible with other constitutional guarantees of the so-called "economic constitution" such as the freedom to work, free initiative in economic matters, and property right, as recognized by the Constitutional Court[i]. Additionally, the legislator should bear in mind other assets

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that may be damaged; for example, the access of citizens to goods and services that may be essential.

Thus, it is reasonable not to absolutize the right to strike. The result is predictable; the strike becomes a pressure instrument for union leaders, which is impossible to counteract, and that will evidently lead to increase legal strikes in Chile and, consequently, it will entail productivity drops and labor conflicts in the country.

Labor unrest, contrary to the official discourse concerning this reform, is very limited in Chile. The ENCLA Survey (2011) shows that only 1.7% of the employees perceive the existence of a permanent conflict within the company. On the other hand, according to the statistical information released by the Labor Office, in 2013 only 2% of the workers took part in legal strikes, a situation that affected 0.4% of the businesses regulated by the body of laws for employees.

Although the right to strike should not be obstructed, it neither seems reasonable to absolutize it above other rights that are equally valid. We consider that the current labor legislation in Chile manages a good balance in this sense, which is not opposed to making some adjustments to the regulation. The current legislation forbids the replacement of employees on strike, unless the employer fulfills certain conditions. The most important is that he must be willing to offer the workers the conditions of the previous collective bargaining adjusted by CPI, and additionally, to pay a bonus of 4UF per replaced employee. This fact eventually becomes a strong incentive for the employer to, at least, maintain the conditions of the collective bargaining, because otherwise he is prevented from having replacements in case of a strike. The bill eliminates this incentive.

The replacement possibility under specific conditions also enables both employees and employers to be more aligned with the market conditions in their petitions and offers, respectively. The reason for this is because if the employer offers highly unsatisfactory conditions, he will have trouble finding replacements to do the job. On the contrary, the possibility of being replaced paves the way for workers to put less pressure on conditions that are impossible to address by the employer. In this way, the replacement possibility leads the outcome of the collective bargaining towards market conditions that, by definition, are fair for both parties.

The previous point is also related to the freedom to work. The impossibility of replacing employees acts as a monopoly of the unionized workers, against those who are unable to be in this category, obviously better than the condition of unemployed or informal worker. The freedom to work for these groups is impaired, because they are usually more vulnerable than formally employed persons. The property right and the freedom to manage the own business is also damaged, since a restrictive definition of minimum services prevents the employer from using and enjoying his own goods, and

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he can neither avoid to put at risk the financial sustainability of his business. It seems quite evident that the infringement of these rights entails a significant discouragement to entrepreneurship.

Probably still more important than the above is that the replacement prohibition during the strike does not only leave the employers as hostages of the union leaders, but also the citizens, who will see their quality of life and security severely damaged as a consequence of not being able to acquire valuable goods and services. This goes beyond what is usually considered as essential services, as it was recently demonstrated with the airport strikes, custom services, cash availability, public transport and others. As a matter of fact, strike situations often affect citizens to a much larger extent than employers. Thus, the right to strike of a minority group ends up generating huge costs at society level.

CONCLUSION

The Labor Reform moves forward, despite the total rejection of the opposition parties, and still worse, of the scarce citizen support. The proceeding at the Chamber of Deputies aggravated the bill's negative effects; therefore, the Senate has a complex task ahead in trying to avoid that this reform stops being a negative blow to the deteriorated expectations.

A key issue is to moderate the negative effects of ending strike replacements. The bill, just the way it is, totally absolutizes the right to strike above other rights that are equally or more important. The people end up being hostages of union leaders, something that could adversely impact the population's quality of life. Some of this has already been insinuated in recent legal and illegal strike situations, which could proliferate if the present reform is approved.

[i] The Sentence of the Constitutional Court, STC Case Nr 1,413, considering 21st, indicated regarding the freedom to work that: "This right is part of the "economical constitution" and, therefore, it should be consistent with the set of principles derived from the Constitution of 1980, especially the guarantees of Article 19, which define the so-called Economic Public Order in relation to the foundations of the institutional framework".