

IS ORDOLIBERALISM DEMOCRATIC? – LEGAL APPROACH

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Abstract: Ordoliberalism in contemporary legal orders is frequently associated with democracy or the so-called principle of a democratic state of law. However, in source assumptions of a doctrine of ordoliberalism one can perceive quite different preferred political systems. This paper aims at analysing the assumptions of a doctrine of ordoliberalism, as well as its place and role in a democratic system of contemporary states.

Keywords: democracy, law, ordoliberalism

1. INTRODUCTION

Ordoliberalism is temporarily treated as a doctrine at a base of social market economy (Banasiński, 2015). Also, it is placed among the so-called “third road doctrines”, therefore characterized by compromise and trying to reconcile freedoms and rights of an individual derived from a doctrine of liberalism as well as social security measures drawn from a doctrine of socialism (Chojnicka, 2004). Ordoliberalism, apart from the above solution of compromise, also took into consideration a conservative system of values, as well as Christian ideas (Chojnicka, 2004). A notion of *ordo* was taken from the philosophy of St. Thomas Aquinas, which – however – reached the origins of Christian philosophy and spoke on an order, necessary stable political system of a state and harmonious social system (Chojnicka, 2004). Ordoliberalism is a doctrine touching on political, legal, social, religious and economic issues. Ordoliberals criticized both a democratic and a totalitarian system, as well as socialist, welfare and liberal states. In the social system ordoliberals preferred decentralization and de-concentration, as well as strong right of ownership (Juszczak, 2009).

The sources of ordoliberalism can be found in a social and economic situation of European states, especially of Germany after the First World War (Kubiak, 2012), and also the global economic crisis, which broke out in 1929 and its consequences (Cameron and Neal, 2010). The reaction to the above was meant as an establishment of new socio-economic order (Latin: *ordo*) of an eclectic character, but strongly based on Christian values. For that reason, human communities as well as middle class reached a key importance (Kubiak, 2012). Founders of ordoliberalism attached high

importance to individual freedom (Kubiak, 2012; Grabowski, 2016), but at the same time they did not think that guaranteeing individual freedom is possible owing to democracy. Contemporarily in democratic legal orders of the states, as well among European Union countries a term „social market economy” can be frequently encountered, which derives from a doctrine of ordoliberalism, however one should analyse how in a very doctrine of ordoliberalism democracy was perceived as a political system and whether an approach to democracy was not reformulated within the framework of a notion of social market economy.

This paper aims at analysis of assumptions of doctrine of ordoliberalism, as well as its place and role in democratic systems of contemporary states.

2. ORDOLIBERALISM AND DEMOCRACY

Analysing the sources of ordoliberalism one can notice that ordoliberals did not have a positive attitude to democracy, what is true they did not reject it completely, but claimed it to be one of the more difficult forms of government (Juszczak, 2009). Ordoliberals also noticed in democracy a reference to French rationalist and constructivist liberalism derived from Cartesius. They pointed to English liberalism as its opposite, whose founders included D. Hume, A. Ferguson and A. Smith, and also such French thinkers were connected with this current, such as: Montesquieu, B. Constant and A. de Tocqueville (Juszczak, 2009). State interventionism resulted from obliteration of borders between the above currents (Tuchtfeldt, 1981; Juszczak, 2009). Ordoliberals also emphasized that contrary to appearances freedom is not conditioned by democracy which often leads to conflicts, bureaucratization, ideologization and proletarianization, this is why one of the fathers of ordoliberalism. W. Röpke wrote that „chemically pure democracy is as unpotable as chemically pure water” (Juszczak, 2009). In this context it is worth quoting Montesquieu’s words: „even though in democracies the people seem to act as they please, political liberty does not consist in an unlimited freedom. In states, and actually in societies directed by laws, liberty can consist only in being able to do what we ought to will, and in not being coerced to do what we ought not to will. [...] Liberty is the right to do everything the laws permit; and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power” (Montesquieu, 2016). Montesquieu also points out that by nature democracy is not a free state, and political liberty „exists only in moderate government”, whereas a political system should be so constituted „as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.” (Montesquieu, 2016). German ordoliberals associated bad democracy, and especially parliamentarism, with the times of the Weimar Republic. In a parliamentary democracy particular parties have large impact on politics, and definite groups of interest support these parties, acting not for the wellbeing of the entire state but for particular interests. For this reason, some ordoliberals, such as e.g. W. Eucken cited enlightened absolutism as a model, and especially the office of the Chancellor held by O. von Bismarck (Ptak, 2004). Another representative of ordoliberalism A. Rüstow pondered in his lectures with a symptomatic title „Dictatorship within the boundaries of democracy” how to strengthen a principle of state leadership in opposition to parliamentary democracy and proposes *sui generis* chancellor’s dictatorship (Juszczak, 2009). So an idea of a strong office of the chancellor is noticeable among German thinkers, this is why today, looking at a position of the chancellor is a political system of the Federal Republic

lic of Germany indicates that in Germany a chancellor's democracy is functioning, obviously not within the Bismarck or ordoliberal perception, but with a distinctive and important political, international and social position of the chancellor in the state political system. In Rüstow's assumption the chancellor dictatorship should be restricted by law as well as a term of office. Ordoliberals, having won the power in the Federal Republic of Germany revised their views in this respect under the influence of Americans, accepting democracy as a political system, however still considering it to be a „difficult system people should mature to” (Juszczak, 2009).

3. ORDOLIBERALISM VERSUS SOCIAL MARKET ECONOMY IN LAW

Doctrine of ordoliberalism originated in the 1920s (the first work regarding this subject is deemed to be a paper written by W. Röpke in 1923 titled „Wirtschaftlicher Liberalismus und Staatsgedanke”, the founders of ordoliberalism also include A. Rüstow, W. Eucken, F. Böhm, L. Erhard, A. Müller-Armack), whereas the founders of a concept of social market economy include A. Müller-Armack and L. Erhard, who incorporated their concepts in 1950s and 1960s (especially the last one of them, who held the highest positions in the Federal Republic of Germany). Analysing the functioning of a notion of social market economy in a doctrine of its founders and in law it should be pointed out that in this concept one can notice approval for a democratic system, and what is more, common functioning of a principle of a democratic state of law and principle of a social market economy. The basic assumptions of social market economy include (contained in the concepts written by A. Müller-Armack and L. Erhard): individual liberty, market competitiveness, a principle of subsidiarity of operation of a state in an area of economy, a large role of social policy, objective treatment of an employee, antimonopoly policy of a state, functioning of benefits, tax relief being social in character, advantage of small and medium companies, a principle of self-assistance, functioning of an organized society, economic growth, social security, policy of full employment, stability of prices, social peace, justice and reliability (Kubiak, 2012). Therefore, it seems that a social market economy as a concept is based on basics of ordoliberalism, however at the same time reformulated the very doctrine of ordoliberalism, becoming a rather pragmatic program, changing along the changing social conditions (Kubiak, 2012).

Therefore, one can state that a concept of social market economy, functioning within a framework of a democratic state, and also changed and adjusted depending on changes of a political, social and economic character, and not resulting from doctrine base of ordoliberalism. It can be supported by a fact that a notion of social market economy was contained in art. 3 section 3 of the European Union Treaty, where the EU legislator decides that a basis of the EU internal market is „social market economy of high competitiveness aiming at full employment and social progress” (European Union Treaty, Dz.Urz. UE C 202 of 7.6.2016). Moreover, pursuant to art. 120 of the Treaty on European Union functioning „ Member States conduct their economic policies, having in mind the contribution in reaching the goals of the European Union specified in article 3 of the European Union Treaty” (Treaty on European Union functioning Dz.Urz. UE C 202 of 7.6.2016), and therefore the member states should also in their economic policies follow a principle of social market economy. At the same time, one should state that democracy is a principle in the European Union law (Barcz, Górka, Wyrozumska, 2015). A principle of social market economy may also result from art. 20 section 1 of the German Constitution, in which a German lawmaker

decided that the Federal Republic of Germany is a democratic and social federal state („Die Bundesrepublik Deutschland ist ein demokratischer und sozialer Bundesstaat“; Grundgesetz für die Bundesrepublik Deutschland). A principle of social market economy was expressed exemplarily in art. 20 of the Constitution of the Republic of Poland, where the Polish legislator decided that „Social market economy based on freedom in business activity, private property as well as solidarity, dialogue and cooperation of social partners constitutes the basis of economic system of the Republic of Poland” (Constitution of the Republic of Poland, Dz.U. 1997, No. 78, item 483 as amended). In the doctrine of the Polish constitutional law it is indicated that currently one, common definition of this notion is lacking (Banaszak, 2012), but also it is assumed that this principle consists of: laws of the market, community, freedom of business activity, private property, „solidarity, dialogue and cooperation of social partners” (Sarnecki, 2014; Banasiński, 2015). A principle of social market economy is connected with constitutional principles of social justice and inviolability of human dignity (Banaszak, 2012), as well as freedom of business activity (Szafranski, 2018). It should also be emphasized that a principle of social market economy in the Constitution of the Republic of Poland is strongly linked to a principle of democratic state of law (art. 2 of the Constitution of the Republic of Poland), so therefore it functions within the framework of the democratic system.

As a consequence one should state that a concept of social market economy in comparison to a doctrine of ordoliberalism is strongly rooted and connected to a principle of democracy, and more widely with democracy as a political system.

4. CONCLUSIONS

Coming to the conclusions one should state that ordoliberals originally had negative attitude to democracy as a political system, pointing out that implementing it in its pure form is not possible. They also treated democracy as a political system for which it is difficult to function. Ordoliberals decisively leaned towards forms of government based on some of the rules of democracy but with tendencies directed towards strong monistic institutions. One should emphasize, though, that they did not reject democracy completely, what can be proven by a fact that following their taking of power they reformulated their views on a democratic system, admittedly still considering it to be difficult, but accepting not only some of its principles but also its functioning. At the same time, it must be emphasized that after ordoliberals had taken power in Germany they reformulated certain assumptions of doctrine and adjusted to the then current political system and social expectations. Therefore, an idea of social economy was developed as a socioeconomic system functioning under the government of ordoliberals. A notion of social economy is present in legal systems of some democratic countries (even in Constitutions), as well as in the European Union law (also in primary law). In professional literature one can perceive a dispute whether one can identify the ordoliberal doctrine with social market economy, or whether it's a completely different doctrine (Kubiak, 2012; Ptak, 2004). It must be emphasized, though, that the doctrine of ordoliberalism is of eclectic character, but it cannot be restricted only to the attempts of reforming capitalism (such approach can be found in for example in: Kramarek and Skorupa, 1989) or socialism, similarly like even a concept of social market economy, as deriving from a doctrine of ordoliberalism, cannot be treated as a connection of capitalism and socialism (Juszczak, 2009).

Analyzing an issue of democracy and its perception in a context of ordoliberal doctrine one must emphasize that with this in mind one should state that notions of ordoliberalism and social market economy are separate terms, possessing different designations, especially that a notion and a thought of social market economy successfully functions in democratic systems. One should emphasize, though, that a view on democracy as a political system is not an only element of a concept of ordoliberalism and social market economy, this is why one should have stated, rather, that the doctrine of social market economy is a syncretic concept which was created in political practice and there are no elements which would be so distinctly defined and unalterable as in the case of the doctrine of ordoliberalism, and also is subject to interpretation in a broader scope. Therefore, one can state that the doctrine of ordoliberalism is of theoretical character and in this respect, democracy is not treated as the proper political system *in abstracto*. Only a concept of social market economy, which is based on the foundations of ordoliberalism, but is not identified with it, accepts democracy and functions in its scope. Ordoliberalism leans towards strong individual rule limited by terms of office, creating *sui generis* new political system at the interface of democracy and autocracy. Using terminology from the science of management one should point out that fathers of ordoliberalism postulate maximal efficiency of managing a state, and procedures functioning in democracy as well as alternating influences of various groups of interests and rule of political parties may often deteriorate the efficiency of administering a state. However, much would depend on political culture and honesty of persons governing in a system proposed by ordoliberals, because a boundary between a political system of *sui generis* authoritarianism in democracy and authoritarianism or totalitarianism may be very changeable.

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