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Greece

In case of illegitimate debts creditors can be contravened

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Eric Toussaint was interviewed by Kristina Bozic for Slovenian weekly newspaper Dnevnik in early March. [1]. On March 17 the speaker of the Greek parliament, Zoé Konstantopoulou, announced during the creation of a commission to audit the Greek debt. The scientific coordination of that commission will be led by Toussaint. “The purpose is to identify any debts taken on by the Greek government that may have an illegal, illegitimate or odious nature,” the Greek people “has the right to demand that any part of the Greek debt that may eventually be shown to be illegal – be erased,” she declared.

KB: Most of the arguments against debt restructuring and cancellation are based on the conviction that agreements and laws have to be respected. You claim that debts can be illegitimate and their cancellation necessary to ensure the rule of law and respect of constitutions. What are legal frameworks and arguments do you base your arguments on?

ET: The first lesson of history should be that debts have often been written off. The major debt cancellation in the 20th century was the London agreement about the German debt in 1953, when 62 percent of the German debt was written off [3]. The creditors furthermore agreed to give up their demands for German reparations for the occupation and destruction of the Nazi regime during the Second World War. This was a very important debt write-off agreed on by the creditors. Later the Polish debt was written off when Poland decided to leave the Warsaw Pact under the presidency of Lech Walesa. In 2004 creditors canceled 80 percent of the Iraqi debt. There are numerous examples of debt cancellation.

The legal basis for the debtor country to decide as a sovereign state not to pay back the debt is its constitution or the fact that there are priority obligations a State has to meet. These are mostly connected to its duty to guarantee the human rights of its population. This obligation has priority over any obligation to repay a debt and therefore, if repaying debts impedes the possibility for the government to guarantee public healthcare, public education, peace and security for its population, the said government can decide not to repay the debt.

Moreover, if the debt claimed by creditors is an illegal debt then the contract of indebtedness is null and void. In this case it is possible for the sovereign state to tell its creditors that what they are demanding to be paid back is in fact illegal. In the case of the Eurozone we can claim that at least parts of the loans given by the Troika of the European Central Bank, the European Commission and the International Monetary Fund in 2010 to Greece and Ireland, in 2011 to Portugal and in 2013 to Cyprus, are illegal. In the case of Greece I would claim that the loans are illegal in their entirety.

But the majority would say that the Greek government agreed to the conditions of the debt and even requested the loans. Why do these arguments not convince you?

In 2010 the Greek government did not abide by the Greek constitution. They accepted the loans given by the Troika without consulting the Greek parliament. Besides, as a party to the contract, the Troika had an obligation to oversee and control that the constitution of the debtor country be respected; that is, that the other party of the contract abides by the law.

Furthermore, we can consider the actions of the states that are the creditors. In 2010 fourteen states, all members of the Eurozone, gave bilateral loans to Greece for an amount of €53 billion. However, article 125 of the Treaty on the

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Functioning of the European Union states that no state can engage its finances to support the finances of another member state of the EU. This Article, i.e. the constitutional basis of the EU, was breached.

Therefore we have a situation in which the Greek government did not respect the Greek constitution while these fourteen states of the EU did not respect the constitution of the EU.

This is important because the new government brought to power by democratic elections in Greece can now say that neither the constitutions of Greece nor the EU constitution has been respected. Moreover, the Statute and the rules of the IMF have not been respected during the bailout of Greece, in which the IMF participated, thus there is a legal basis to claim that the debt is illegal and should not be paid back.

But are there legal tools to enforce such legal arguments? The Council of Europe has found that the effects of austerity measures breach the standards of the European Convention on Human Rights yet nothing has changed. The European Parliament has concluded that the acts of the Troika were outside of any legal framework. Yet, in February we saw pure force used to ensure that such illegal situations continue.

There is no European institution which could intervene and give support to and reasons for the SYRIZA government not to repay the debt. There is no one with the authority to say that they authorize the new Greek government not to pay back their public debt. However, what a democratic government could and should do in such a situation is take a sovereign act based on legal arguments. A sovereign act is an acceptable and recognized action inside the international community. However, the government has to take responsibility for its sovereign act and be aware of the consequences. This is a viable option. Especially, since such government could not be expelled from the Eurozone because there are no legal definition or mechanisms to expel a Euro-member state.

But the sovereign act would mean a one-sided decision to stop repaying the debt, followed by a default, and not an agreed debt cancellation as happened with Germany after the Second World War?

But if we look more closely at the London agreement about the German debt we see that Germany had been in default since 1932. Consequently it was in the interest of the creditors to agree to the write-off of the debt in 1953. On the other hand, if defaulting is based on good and sound reasons and is done to defend the international law and the state's priority obligations, to guarantee human rights of all its inhabitants, then defaulting creates a new correlation of power with the creditors. Their power exists only as long as debt is paid back to them. When one decides to suspend payment, creditors have a problem. It sounds trivial but it is real. John Maynard Keynes said, that if you have a debt of £1,000 to your bank, which you cannot repay, then you have a problem. However, if your debt to your bank is 10 million, which you cannot repay, then this is no longer just your problem. If you suspend payment, it becomes the bank's problem. This is the fact of life and this reality should be used so as to meet human rights.

I do not advocate suspension of debt payment in situations when this is not done in the name of international law and in defense of human rights. However, as shown in the book AAA that we coauthored with Damien Millet, Greece was trapped inside the EU and the Eurozone. I have shown in my works that the Troika gave loans to Greece during the first bailout between 2010 and 2012, demanding that this money be used to repay the French, German, Belgian, Italian and other private banks that had lent money to Greece. The Troika loans were not given to boost the Greek economy to benefit the Greek people. The money given by the Troika to Greece had only one aim: to immediately repay the private banks that were responsible for lending Greece money before 2010 without controlling Greece's capacity to repay. This is something that is very important for European citizens to know and understand. There are many lies, constructed and spread to falsify what really happened in Greece and to present the Greek as lazy, corrupt... We witness this totally unjust stigmatization of Greece.

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It is crucial for people to understand that the construction of the EU and of the Eurozone actually aims at the satisfaction of the particular interests of the very few and of a privileged minority in the EU, represented by big, private corporations. They do not aim at a real integration that would be in favor of the people of Europe. We need to be conscious of what the EU and the Eurozone really are because this is the precondition if we wish to make any proposal for a real change of the situation.

But do you see the possibility that the EU and the Eurozone could be reformed and changed, as they are constructed and as they operate today?

With the victory of the neoliberal ideology and policies in the 1980s, the definition of the EU, its framework, and with the elaboration of the new EU treaties, the construction of the EU integration has been totally taken over and defined by the private interests of big corporations and major economies of the EU. However, people at the time were not conscious of this shift. The official discourse did not say that they, the leaders of the EU, were giving priority to satisfy the private interests of the small minority. The official discourse talked about the creation of an immense zone of prosperity, where many jobs would be created, that would be a space of peace and democracy. If only the countries of former Yugoslavia and Eastern Europe enter the EU and the Eurozone they will be given a guarantee to have prosperity and peace.

Now people see that this official discourse was a lie and they are ever more conscious of the reality and of what is in fact happening. We could see this in the results of the last European elections, where participation was low while at the same time among those who voted there was a high support for a critical stance towards the EU.

We continue to face the question of how to change this EU and it is a very complex question. However, in some ways the answer is simple. We cannot change the EU from inside the imprisoned EU institutions. These are based on a certain model: therefore, the European parliament has no real power. The power is given to the Euro-group, to the Commission and to the major powers inside the EU. If Germany, France, Italy and Benelux agree on a position, they will succeed on imposing it on others as well. Therefore, we need a refunding of Europe. We need a government capable to disobey what the Commission is asking it to do, if this implies that the human rights of the people in this country will not be respected and guaranteed.

A change could thus come from a democratic government taking the initiative to say that they want to stay inside the EU or the Eurozone but they do not accept the continuation of the same, undemocratic policies imposed by the European Commission. They should enact and demand respect of their sovereign decisions that would be in favor of respecting the human rights of their population.

Are you disappointed in the new Greek government in this respect?

I still have great expectations of what the Greek government could do. The story continues and we will see what happens in the next months. There might still be a chance that they take a stronger stand with the massive support of citizens across Europe. However, it is clear that this is not easy. It clearly implies confrontation with the current centers of power.

How destructive though are the centers of power inside the EU? The arrogance in February seemed immense. At the same time many warn that default opens up a totally uncharted territory.

There is a fear to take sovereign decision. The fear is based on the fact that nobody knows what the next step will be. All the consequences are not and cannot be known. However, the lesson of history is that when certain opportunities appear one should take the risk. Big changes and progress in the world have been the results of strong and confident

decisions.

Franklin Roosevelt in 1933, for example, closed the US banks for ten days to redesign the functioning of the banks and to relaunch the US economy. It took a strong decision and he was not even a leftist. He took this decision because he was confronted with a desperate situation. If at certain times in history this kind of a brave decision is not taken, you lose a historical opportunity. Undoubtedly there is the fear of what will happen if a government takes a strong decision of suspending the repayment of its debt but I am sure that if it has a coherent plan of what it will do, then it can face even such a situation. The first step would be to take control of the banks and guarantee the deposits, then to control capital flow, stop its evasion. This is possible and it has been done already. In March 2013, when the crisis hit Cyprus, provoked also by the policies of the EU and Eurozone leadership, the government in Cyprus decided, with the support of the Eurozone countries, to control the movement of capital. In Iceland since 2008 there have been such controls of capital and it is considered a success story.

Therefore, there are examples in the 20th century and in the last decade of strong decisions taken by governments in Europe and the USA. If we look further afield, examples multiply. In 2007 and 2008 I was the adviser to the Ecuadorian government when they decided to make an audit and suspend the payment of their debt. Theirs is also a story of a great success. The situation of their economy today is good, the level of unemployment is low, living conditions of the population have improved. They had confronted their creditors with good reasons.

One of the aims of my works is to make such examples of successful disobedience, alternatives and resistance more broadly known. They prove that alternatives can and do exist. People who say there are no alternatives are wrong. What is needed is only to be brave enough and able to implement them.

Let's return to your argument that debts should be canceled on the basis of constitutions and human rights. However, constitutional courts have frequently defended austerity and European fiscal treaties in the name of protecting human rights in the long run. In their interpretation keeping financial markets happy is a precondition for the fulfillment of the state's obligation to meet human rights. How do you respond to such argumentation?

In many countries the constitutional court is controlled by conservative forces. The constitutional court can thus give reasons and arguments for the actions of the executive power while the parliament is similarly under the government's executive control. The situation is similar on the EU level, where the Commission has control over the European Parliament and the member states.

If we again turn to the American experience with the New Deal in the 1930s we see that several decisions taken by Franklin Roosevelt were at first considered unconstitutional by the Supreme Court of the USA. When Roosevelt enforced a minimum wage, based on a federal law, the Supreme Court abrogated his decision. Roosevelt however, persisted and for several years struggled against the Supreme Court. In the end, he succeeded in imposing the New Deal thanks also to the great support of the population.

This proves that Supreme and Constitutional Courts can and often give interpretations of the constitution, accepting and confirming some laws, which are in contradiction with the spirit and the letter of the constitution. They submit their decision and adjust their final judgments to what the executive power is asking of them. Therefore the participation and mobilization of the citizens, to create pressure and support the democratically elected government, which wants to change the situation, can make the difference and contribute to the needed change.

If we turn back to Iceland, we can see that between 2008 and 2012 this was exactly what happened. People were mobilized; they stayed on the streets and put the institutions under immense pressure. Only so could they succeed. Today, Iceland remains the only country that put in jail private bankers following the financial crisis. No other European country did this. It happened because of people's mobilization. Therefore, this combination of peoples' mobilization and democratically elected government, which wants to change the situation and has for this the support

of the people, is crucial. Citizens need to remain active and they must truly want to change the situation, otherwise the conservative institutions and powers will only continue with the same conservative, neoliberal and undemocratic policies.

Do you see that this peoples' support and mobilization can still grow or are we already at the point of normalization, with people embracing stability?

I think there is still at a very good momentum. Especially, if we look at the increase in the consciousness of the populations about what is happening. I expressed my disappointment about some actions of the Greek government. However, the majority of Greek people did not have this reaction. They believe that Alexis Tsipras and his government succeeded in imposing a ceasefire with the Eurogroup. The Greek people see this as a first victory. What happens in the next months has not yet been written. We will see... what happens in Greece, in Spain... There is a growing support for the fundamental change of the situation. It will take time, years and it is not easy but I remain confident. There is still a possibility for a positive change.

Translation by Éric Toussaint, in collaboration with Christine Pagnouille

[1] It was published on March 7 <https://www.dnevnik.si/1042708752/l...>

[2] It was published on March 7 <https://www.dnevnik.si/1042708752/l...>

[3] <http://cadtm.org/In-February-1953-t...>