

THE CONCEPT OF LEGAL NIHILISM

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Abstract. O înțelegere teoretică mai profundă a nihilismului juridic trebuie să includă și o componentă pozitivă. Imperfecțiunea legii generează o evaluare nihilistă, și anume aceasta este sursa, motivația și cea ce conduce la căutarea de noi decizii juridice. Nihilismul juridic, cu alte cuvinte este un indicator, o reflecție, un fel de test de turnesol a calității reale de executare și de interpretare normativă. Acest tip de feedback, dacă vreți, reprezintă o estimare a populației dată organismelor guvernamentale și acțiunilor lor. În acest sens, nihilismul juridic apare ca o orientare socială specifică, care indică direcția pentru a elimina tendințele negative în sfera legislativă, apropierea „puterii”, de „societate”, și sporirea autorității statului și dreptului (Сафонов В.Г., 2004).

Key words: Legal activism, Legal nihilism, Realism, Vitalism

There is no truth. There is no absolute state of affairs - not a thing-in-itself. They are sure nihilism, one of the most extreme.

(Friedrich Nietzsche)

INTRODUCTION

As already noted, the legal consciousness of citizens is extremely deformed, unstable and eclectic, because it concluded, on the one hand, a lot of outdated stereotypes that do not meet more of the role and purpose rights in contemporary social regulation, on the other hand, numerous trends of the latest trends in the majority reflecting the populist nature of our "troubled" times and subjective mindset (Matuzov N.I., Malak A., 2001).

Noted also that in a variety of conflicting mentalities, positions, views and opinions in recent years, most prominently manifests a sharp enough, if not total, social problem of legal nihilism, more and more often indicating them selves as negative socio-legal phenomenon, which undermines the foundations of stability and the rule of law in the state and society.

MATERIAL AND METHOD

Meanwhile, winning the unusually broad popularity, called concept - notes K.G. Fedorenko, - remains in isolation from the phenomenon it self, is a proper and thorough analysis its properties, the objective forms of expression, the role and importance in the complex mechanism of social life (Fedorenko K.G., 2002). This circumstance ascertain N.I. Matuzov and A.V. Malko methodologically exactly indicate what a complex and comprehensive problem of legal nihilism- "... in the academic literature on the general theory of law has not yet examined. In scientific terms, it is also in sufficiently has not yet been investigated" (Matuzov N.I., Malak A., 2001).

RESULTS AND DISCUSSION

As a result, necessary, operationally and strictly scientific notion (definition) of legal nihilism in the ordinary or a business circulation more and more "acquires" artistic and journalistic epithets: "egregious", "indefatigable", "elitist", "moral", "political", "linguistic" (Khabibullina N.I., 2001) etc. Unresolved problems of exact

determination of the nature and properties of the moral and (or) legal nihilism in the theory, sometimes leads to complex conflicts that, in practice, since the question of the nature and content of the concept of "legal nihilism" has already become the subject of litigation (Petrova V.R. 2004). If you add up all the diversity of views and opinions expressed by (once) on the manifestations of the moral, legal nihilism, etc., is currently the nucleus of his conceptual designs, mainly includes the following formulations (Fedorenko K.G.,2002):

- legal alienation;
- special type of perception (the legal and (or) social) reality and its evaluation;
- negation of the value of all things, the value of meaning, any rationale, direction of change in the world;
- disregard and disrespect for the law, a defect of justice;
- skeptical, indifferent or negative attitude to the law, disbelief in its potential to solve(resolve) the social problems;
- negation of accepted values and ideals of existing standards generally accepted social behavior, and popular in the society culture;
- sustainable disparaging or another negative attitude to the law;

Correctly reflecting one or another part of social nihilism as ideological and psychological and social phenomenon, called approaches, however, do not give a whole, comprehensive and adequate representation of the true properties, nature and content of the phenomenon, which allows a methodologically precise identification of one or other manifestations (forms of expression) of the legal, moral, political, etc., nihilism in public life, to explore causes of its origin and functioning, relationships with other social phenomena.

In this regard, of course, P.A. Gorokhov, pointing to the fact that today must be" ... to give this phenomenon the status of a specific subject matter of social and philosophical knowledge and to develop adequate ontological, epistemological, axiological and methodological principles of his analysis"(Gorokhov P.A., 2006), because the absence of careful and sustained attention to such problems inevitably leads to the fact that "the people lose respect for their authority, or to feed her even contempt ... Contempt for state authorities is the beginning of universal spiritual debunking and divestiture: for denial of public duties is the negation of all relations; contempt for the public authority corrupts legal consciousness, the expansion of justice inevitably captures the honor and conscience, kills all sense of proportion and justice, extinguish the faith and religion. People become a victim of spiritual nihilism (Gorokhov P.A., 2006). As a starting point of this analysis, in our view, it is necessary to take the unity of the historical and logical approaches to scientific research, because it is known that underlying logic is always historical, historical penetrates into a logical, not only interacts with them, but also connects to it (Ilyin I.A., 1993).

Respectively, when analyzing the effect of social phenomena cannot "forget the underlying historical context, look at every issue from the perspective of how well-known phenomenon arose in history, what are the main stages in its development, this phenomenon passed, and in terms of its development, to examine

what this thing has now become, because without actually playing the historical a priori exclude the possibility of a logical understanding of the regularities, but also without a logical reflection of the objective course of history can not reveal the internal causes and mechanisms of law of its movement.

Nihilism has many faces in its manifestations. Depending on the kind of social values is denied, it can be moral, legal, political ideological, religious, etc. And although the nihilistic consciousness is united in the power of unity behind its objective, in reality it is manifested in forms as diverse (Petrov, V.R., 2004) how diverse those who share his position.

The historical cut all nihilistic phenomenon seems to be reduced to four basic types (liberalism, realism, vitalism and nihilism of destruction) (Polyakov K.O., 1997), which, in principle, can viewed as the main stage of the genesis of a single process, which can be called nihilistic dialectic.

Naturally, the stage in question should not viewed purely chronologically (as strictly following one after another).

While in the narrow sense, they really represent dialectical development (individual and social) nihilistic consciousness over time, starting with the failure of the nihilistic experiment the French Revolution and ending with the rise and then and the collapse of the most pronounced effects of social nihilism: National Socialism, Nazi Germany, in part, the Nazi Italy and, of course, Russian Bolshevism. So, two decades before and two decades after the middle of the XIX century can be viewed as a period of prosperity and influence of *liberalism* most typical representative of which can be considered J.S. Miles.

The period of *realism* is chronologically the second half of the XIX century and, on the one hand, represented by socialist philosophers, on the other hand, philosophers and popularizes of the idea of realism.

Vitalism - in the form of symbolism, occultism, art expressionism and others (nihilistic, in fact) of evolution and the mystical doctrines first declares himself within 1875 and for almost half a century, is one of the most important ideological trends (Polyakov K.O., 1997)".

That's nihilism of destruction of civilization manifested not so much a phenomenon of denial of common values, as in the pure form of nihilistic anger society against the whole of creation and civilization.

Rage, which, according to themselves nihilists, can not be satisfied until, until will bring them to absolute nothingness. It is a pure, destructive, in fact, nihilism, in contrast to liberalism, realism or vitalism, the destruction of the old order and the abolition of absolute truth (absolute order) is not so much a prelude as an end in itself nihilistic society.

The principles of this damage was primarily justified by Friedrich Nietzsche and Stirner when the first, justifying nihilism (in its extreme manifestation), for example, wrote: "Who wants to create should first destroy, crush the shared values", because more, "... there is no truth and everything is permitted"(Nietzsche F., 1969), and the second each of his writings declared war against every criterion and every principle, opposing his "I" throughout the world, and triumphantly laughing at the, "grave of mankind. " Moreover, Friedrich Nietzsche was the first how define the concept of

"nihilism. " "What is nihilism? - he asks and answers: "The fact that higher values can lose its value,... there is no goal, no answer to the question "why?" (Nietzsche F., 1969).

A profound idea behind such a definition of "nihilism" - notes O.R. Gulina – because nihilism arises where life depreciates, where the purpose is lost and there is no answer to the question about the meaning of life, the sense of the world it self. Nihilism - a phenomenon related to the revaluation of higher values, namely those values which alone gives meaning, all social actions and aspirations of people (Gulina O.R., 2007) . In this context, is no accident that the author of the treatise "European nihilism" M. Heidegger connected the nihilism, especially with the death of Christian God, when the "Christian God" loses its power over the human destiny. More over, with a comparison between faith in God and nihilism, Heidegger *a priori* preferred the last as "durable event," as the dominant truth about what all previous goal of being shaken.

In this context nihilism - for Heidegger - it is free and clear objective to establish new values, the release of former values as a liberation for some reassessment of all these values.

From here, for Heidegger, nihilism in its essence - the main movement in the history of Western Europe. And this movement reveals a depth that its deployment could have the effect of a world catastrophe (Heidegger M. 2010).

The true causes of the moral, legal, religious, etc., Nihilism Russian society, above all, are the real assessment socium those emerging daily, repetitive, stable social injustice relationship in which the legal (or otherwise called a social regulator), in spite of all declarations on this issue, and if attached to the role of social control, it is not to the extent that to raise to respect and social need for ongoing treatment for him.

It should be noted, in the *first* place, that each of these authors directly indicate public (social) character of legal nihilism, objectively showing it-self in measurable legal and (or)the moral evaluation of social relationships.

In the *second* place, is symptomatic the fact that as an objective criterion for potential of law V.A. Tumanov puts largely moral, in fact, the category of justice, thus underlining the one hand, the inseparable connection between the moral and legal component of nihilism as a social phenomenon, on the other hand, the inseparable connection between law and morality in social regulation.

In the *third* place, V.B. Tkachenko precisely observes that nihilism does not just deny the generally accepted system of social values, he puts forward as alternatives to their (subjectively meaningful) ideas and ways of organizing (regulation) of emerging social relations.

In contrast to these authors, I.I. Karpets and A.R. Ratinov, defining legal nihilism through the legal category of negativity, stress is an active illegal trend of personality.

In many ways, with them expresses solidarity, A.I. Dolgova, which defines nihilism as a formal relationship to the law, and the carrier of legal nihilism as a person in activities guided by only their desires and interests (Dolgova A.I., 1999).

In fact, in the same (personal) aspect defines nihilism and P.P. Baranov, according to the position, which is legal nihilism - there is a deformation of legal consciousness, originally anticipated, small stock of legal knowledge a conscious disregard requirements of the law, excluding legal intent.

In the academic course on the general theory of State and of law, published in (1998) under the general editorship of Professor M.N. Marchenko, nihilism, considered as a general social phenomenon, is also defined as negative attitude of the subject (group class) to certain values, norms, attitudes, ideals, individuals, and sometimes all sides of human existence (Matuzov N.I. 2001).

Moreover, developing this proposition, N.I. Matuzov seems accurately out two extremely important part of the investigated phenomenon, pointing in particular to the fact that I tis nihilism - a) a form of attitude and b) the social behavior of the individual (group, class or society in general) (Matuzov N.I., 2001).

CONCLUSIONS

Moral and legal nihilism – is a kind of social nihilism as a generic concept.

Finally, unified views of several authors I can only say that: the society holds today, as a condition of progress, a system of legal values that reflect well-articulated on the one hand, practical experience and socio-political disposition and management of human community, and secondly, the creation of rules and principles based on abstract and theoretical and legal nihilism in which and which is regarded as a rejection of the concept of law as a social value and which is manifested by the negative attitude towards the concept of law, law and order, in the uncertainty in the law need and its social utility is its right to exist.

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