

Legal Nihilism Eradication Through the Development of Legal Culture in Kazakhstan

Arman S. Akhmetov

Pavlodar Pedagogical State Institute, Pavlodar, Kazakhstan

Abstract: Today's Kazakhstan can be characterized by deep social and economic transformations, which are particularly connected with formation of civil society. The most part of post-soviet republics experience the process, which is peculiar to a transition period started in the 90s, when they gained independence and started their way from "ideas of socialism and communism" to the ideas of democratic state. There were no talks about human rights and freedoms in Soviet Republics, but nowadays Kazakhstan is claiming to be constitutional. Though, such phenomenon as legal nihilism cannot be eradicated from Kazakhstani society that easily. Negation of widely accepted moral values and principles, with the help of which society can function, is peculiar to this population. Living under the letter of law is no longer vital and obligatory and the most worrying fact is that people are not bearers of legal consciousness as they are meant to be. Legal nihilism can be defeated only in a society paying much attention to legal education and where the system of moral values is preserved.

Key words: Social and economic transformations • Kazakhstan • Nihilism • Civil society

INTRODUCTION

Deep social and economic transformations, which are particularly connected with formation of civil society, characterize today's Kazakhstan. The most part of post-soviet republics experience the process, which is peculiar to a transition period started in 1991, when they gained independence and started the way from "ideas of socialism and communism" to the ideas of democratic state. Where there any talks on human rights and freedoms in a soviet period? Of course, this question is rhetoric. It resulted in collapse of morality and basic principles, demolition of old regime. Changes the reign, change the minds, thus, more and more often we can hear from both Kazakhstani and foreign scholars about such a menacing phenomenon as legal nihilism. The word entered lexicon of common people and became a part of everyday speech few years ago, but it already lost academic preciseness and its connotation is now rather vague [1]. So then, arises the question, what legal nihilism is and how it appeared.

On the Nature of Legal Nihilism: Before digging deep into occurrence of legal nihilism, let's make a short historical excursion. As we know, in the philosophy of the Middle Ages the primary idea was the idea of the

Righteous City, a Faithful City of God and the futility of earthly life. Serving God was considered perfect freedom. Thus, the most widespread ideas were Thomas Aquinas' ideas, who believed that the cause of all evil was in human freedom. Aquinas distinguished four kinds of law: the eternal law (lex aeterna), natural (lex naturalis), human (lex humana) and divine (lex divina). [2] Man was a creator of human law, which is a positive law and is derived from natural law. All people are a social phenomenon and are sociable by nature, so it follows that legal law was created in order to resist injustice. But to a modern society, who is used to relying on human authority, natural law in this sense is no longer understood, thus, not supported. The great number of people nowadays claims that there is no nature in law, so law is naturally amoral. [2] But if the regulations are artificially created, there are plenty who prefer to disobey the law and neglect widely accepted values.

Nihilism (from the Latin nihil, nothing) is a negation of such meaningful aspects of life as historical and cultural values, moral and ethical standards and fundamentals of society. Legal nihilism and nihilism in its broader sense are phenomena existing and developing in the world for a rather long period of time, which makes it possible to ascribe nihilism as characteristic to a certain stage of European civilization

development. Most precisely, this stage is characterized by Nietzsche in his statement "God is dead", which means that by the end of the 19th century European culture lost feeling of God and his presence in the world and, thus, the understanding of the world was not anymore based on recognition of absolute values, but was connected with fundamentals of axiological relativism. Other German thinker, Martin Heidegger, analyzing the basis of phenomenology of European nihilism as the element of modern consciousness, revealed key features contributed to its development and existence. [3] Because of being vulnerable due to domination of senselessness and overall loss of values, the world gave birth to nihilism. Absence of the adequate valuable hierarchy led to understanding of equivalence of all values, their relativity and, therefore, finally, absence in them any absolute truth or validity. Also, the phenomenon of nihilism conveys itself in belief that the inner and spiritual world of the person and society are a complex of so-called psychological requirements and represent only a "network" of private interests crossing each other. Taking these ideas into consideration, we can see how the assumption about absence of meaning, order and integrity in the world and society appeared.

But following the process of "sudden" nihilism occurrences, we can get lost. Middle Ages, 19th century, or, maybe, modern epoch (for e.g. reconstruction of the sixties, which was largely a trigger for America's legal nihilism back in the 80s)? [4] Every time humanity was shocked or distressed by disordered society, it has not failed to "leave its footprints on the sand". So what is the nature of such a dangerous social disease? Contrary to classical belief, modern researchers, such as A.I. Novikov, consider that nihilism is not the object of denial, but the extent of denial, its categoriality and generality. So, according to Novikov the general feature of all forms of nihilism is that in different extents such features as absolutization of subjective, the reality assessment from a position of the atomized individual, who rejects objective regularities, logic of history, collective interests of social communities are inherent [1].

Legal nihilism is more frequent and exact manifestation of nihilism as sociocultural phenomenon. Therefore, it is necessary to understand that axiological consciousness values in relation to the right and law are quite relative. So, N.I. Matuzov considers that the essence of legal nihilism is in "generally, negative attitude and disrespect towards the right, law and political regime". [5] Adhering to understanding of legal

nihilism as cultural phenomenon, it is necessary to consider I.D. Nevvazhay's position. [6] From his point of view, legal nihilism can be explained by latent sociocultural discrepancy between the requirements made by actual legal culture and conceptions based on archetypal experience.

Nihilism and Idealism. When Did Legal Nihilism Appear at First?:

If to study such "antipode" phenomenon as legal idealism, it is possible to define it as the estimated phenomenon which represents result of an evaluation in each type of legal culture. Legal idealism is a certain type of legal culture, which absolutizes reality and creates its own value. Therefore, here we have Matuzov's point of view on legal nihilism and legal idealism: "...both are fed by the same roots-legal ignorance, undeveloped and deformed sense of justice, deficiency of political and legal culture." This statement is not absolutely exact. [5] But it is true that aforementioned opinion on legal ignorance and deformed sense of justice, etc. is rather relative and vague.

Unlike legal nihilism legal idealism is connected with a complete negation of existence of other legal culture types, it acts as an evidence of that a certain type of sense of justice can't express certain set of values in the context of real life. Legal idealism shows that the context of real life completely corresponds to values of existing and only possible legal culture. In this sense legal idealism is represented as the most radical phenomenon in comparison with legal nihilism, since the last can be related to any type of legal culture, but it is also understood as a true one.

If legal nihilism as a phenomenon appeared in Western society, let's draw attention to legal culture in the West. Western society, as a rule, observes the law, relying on a formula "with a strong sense of duty", i.e. the population obeys the law not because of fear to take responsibility and be punished for a crime, but because "It is a tough law, but it is the law." (*dura lex, sed lex*). Certainly, to the ordinary citizen the example of law-abiding behavior is actually set by the government presented by high rank officials; watching their way of life and behavior in the process of problems solution, people can make exact judgment and choose their own behavior model. Undoubtedly, leadership here belongs to Germany-in this European country the letter of the law is strictly followed not only by ordinary residents, but the same letter of the law is obligatory for the governing circles and the high performing managers of government.

As one of the best examples of setting principles of the law as the highest ones can serve impeachment of the 42nd President of the United States, Bill Clinton. In Western Europe governs mutual legal politeness, this gives certain positive moments: law-abiding behavior is an example for every other citizen.

Situation in Kazakhstan: Unfortunately, it is necessary to admit the fact that considerable part of the Kazakhstani population still isn't acquainted with legislative norms, even though requirements for this knowledge and ability to apply it are dictated by vital needs of everyday life. Thus, we can consider the phenomenon of legal nihilism present in Kazakhstani society. This presence is characterized by collision of different legal cultures within a society. Historically, centuries ago nomadic population of Kazakhstan based all its judiciary system on local regional regulatory norms, namely, Adat. Then, only in the 17th century Kazakh khan Tauke formulated the laws in a written way and that so-called first Constitution had the name of Seven Laws. It was mainly based on Adat and consisted of seven parts, including criminal law, property law and the rights of widows and orphans. The highest attention was paid to "kun"-a financial punishment usually paid in a form of cattle. The more serious crime was committed or the higher social status a victim had-the more cattle a felon gave to his victim or victim's family. Even petty misdemeanor was punished by local judiciary system. But mainly, for disobeying the law people had to give a part of their property away. And, thus, the tradition for bribery was set and it has deep roots in local community minds. We can only imagine what a cultural crash that was, when common farmers used to bribery and sharp social inequality became a part of Soviet Union, where they again got little rights and no freedom at all.

So, as for present days, the basic constituent element of legal nihilism in Kazakhstan society is a set of ideas, which denies existing legal principles accepted by society, but, nevertheless, bears a certain spiritual context which appears due to the relevant system of cultural values in the modern period. Legal nihilism occurs in that case when the relations in society are formed in the "vertical" model, i.e. "tops" concentrate in them the right and the law and duties are generally assigned to "bottoms" only.

If legal nihilism is present in a society, the force of direct action will not necessarily be peculiar to it, thus, power body will correct the law in order to be in the most advantageous position and the rights of citizens can be

abridged. In such conditions the effective mechanism of civil rights protection cannot be created and, as a result, citizens will not be able to show resistance to unfair actions of officials, which will finally conduct to alienation of the population from government and the law. This estrangement from basic and widely accepted principles and norms can become a mode of life and this fact is quite endangering. Population ceases to perceive the right as a regulator and a socially valuable institute, i.e. loses trust and any interest to it. It leads to alienation from the right, society; therefore formation of strong civil society becomes completely impossible. So, legal nihilism possesses certain features. In Kazakhstan legal nihilism is characterized by the following peculiarities:

- Certainly, the first feature is a mass character of the phenomenon, i.e. distribution of legal nihilism is present not only among citizens, but it also takes place in official circles – in executive and legislative branches of power, in the state organs and governmental organizations;
- Legal nihilism of the Kazakhstani society has uncontrollable and aggressive character;
- Legal nihilism exists in various forms and manifestations. It can be legitimate and illegitimate, exist at household level and in professional layers.

Legal culture, which is received through legal education, can construct people's minds and define some characteristics as salient and others as unacceptable. [7] Thus, it is easier to form a healthy civil society. I am strongly convinced that one of the main reasons of legal nihilism in Kazakhstan is a lack of fundamental and obligatory legal education for all its citizens. It is necessary to establish the fact that at the moment the government does not strictly controls behavior of all citizens, especially youth is totally unobserved. The management of law and legal behavior of youth is directly connected with legal education. Knowledge of the rights, education in the spirit of the law has to be inculcated in people's minds from the very childhood; it must begin with education within a family, then at school, as it is a necessary component of a fully developed personality, his or her civil activity and level of legal culture.

Also it is worth mentioning that bringing personal grievances to court is alien to local citizens. That is why many citizens whose rights are violated remain uncompensated and their rights are not observed. The other problem is that often jurors are suspected to

the influence of external powers and their results can be based on this influence, thus, biased verdicts are inevitable. [8]

What are the social dangers of legal nihilism? The main danger is that aggressive manifestation of legal nihilism represents a real threat to safety of all members of society and endangers human health, welfare and also citizens' legal consciousness. Society, in which any law-abiding citizen doesn't feel safe, cannot promote development of adequate positive sense of justice, cannot be recognized as democratic and will not function as healthy civil society. Destructive forms of legal nihilism cause huge damage to sociocultural, moral, spiritual and economic development of the Republic of Kazakhstan. It is also necessary to remember the fact that legal nihilism is a world-scale corroding politically weak societies as rust eats iron. This situation is confirmed by the philosophical and legal thought of the West, which is also defeated by crisis of legal values.

Now there is a rational question: How to solve a problem of legal nihilism? Eradication of legal nihilism in Kazakhstan, even if it is proven hard to eradicate it, is a nationwide task. Scientific approach with the deep analysis of the nature of legal nihilism, regularities of its emergence, ways of its elimination are necessary for reaching this aim. Scientific researches conducted today receive practical realization, but, unfortunately, in insufficient degree for both standard and legal bases; it is a reflection of the fact that generally the level of legal culture within a society and at certain layers of administration system is insufficient. Any law has to reflect level of legal culture within a society and correspond to legal reality since: "The law's disposition of a matter is more just than that of a man." (*aequior est dispositio legis quam hominis*).

Legal Culture as a Tool of Legal Nihilism Eradication: Talk of culture in human rights and diplomatic circles emerged at the beginning of the 1990s as a reaction to quite thrilling events: the ethnic revivals in post-communist politics with their great demands for national sovereignty and self-determination and partial success of people trying to establish their inalienable human rights [9].

Legal culture and actual rights are the most important element of social regulation, besides by means of them basic management of social functioning is performed, i.e. legal culture forms constitutional and legal bases for functioning of the government, it controls the

whole system. How will legal culture help to eliminate legal nihilism from the Kazakhstani society? Here it should be noted that development of legal culture in a civil society requires positive social development and systematic stimulation. [10] Legal education as the main component of legal culture acts as system of measures which are directed on formation of political and legal ideas, the principles, norms and values inherent in national legal culture of independent Kazakhstan. Even if Kazakhstan proclaimed itself a Constitutional State, formation of the constitutional state is inseparable from development of legal culture of the whole society and eradication of legal nihilism. As a result, struggle with unfavorable negative tendencies in legal sphere is highly needed, because it promotes creation of the developed civil society with developed social institutes.

In public consciousness the relation to the right as to inherent social value on the basis of social justice and equality, humanity and personal freedom has to be approved. Each citizen has to realize the real need of increase of legal culture as factor of legal nihilism eradication; otherwise the process completely opposite to the process of formation of healthy civil society can occur. [11] However, it is important to understand also that if to give a citizen boundless rights, it will provoke situation, which can be described by these words: "Extreme right is extreme injury." (*summum jus, summa injuria*) that any more isn't democracy manifestation. The level and the quality of citizens' legal culture is one of the most important indicators of every civil society legal system. Enforcement of culture of lawfulness and building of legal consciousness of the population promote creation of an independent, democratic and constitutional state and serve as important criteria of civil society formation in modern Kazakhstan. Thus, the urge to increase general and legal culture of each citizen has to be the main factor in elimination of legal nihilism from the Kazakhstani society. Besides, the systematical work on prevention of offenses has to be carried out and legal education of the population has to be actively supported, as a result, that will lead to an end of sociocultural crisis and will allow forming of strong civil institutes in independent Kazakhstan.

REFERENCES

1. Kathryn Hendley, 2012. Who Are the Legal Nihilists in Russia? *Post-Soviet Affairs*, 28(2): 149-86.
2. Phillip E. Johnson and March, 1993. Nihilism and the End of the Law. *First Things*, 31: 19-25.

3. Novikov, A.I., Nihilism and Nihilists, Lenizdat, 1972. pp: 296.
4. Owen, M. and April, 1982. Objectivity and Interpretation, Fiss, Reprinted from the Stanford Law Review, 34(4): 739-763.
5. Matuzov, N.I., 1997. Legal nihilism and legal idealism. Theory of State and Law: lectures course. Moscow, pp: 121-124.
6. Nevvazhay, I.D., 2000. Types of legal culture and forms of justice # 2, Jurisprudence, Moscow, pp: 23-31.
7. Anna-Maria Konsta, 2009. Some Thoughts on American Legal Culture: the Legal 'Abject' in Arthur Miller's *The Crucible* and in William Gaddis' *A Frolic of His Own*. In the Proceedings of the SLSA 2009 Conference in Leicester, pp: 1-16.
8. Shara Abrahams, 2000. The Perpetuation of Legal Nihilism and the Assertion of Personal Freedoms in a Post-Soviet World. *Human Rights Brief*, 7(2): 17-18.
9. Almqvist and Jessica, 2005. *Human Rights, Culture and the Rule of Law*. Oxford and Portland: Hart Publishing, pp: 202-203.
10. Kabykenova, B.S., 2007. Philosophy of legal culture. *Announcer KazNY-Series of culturology, political science, philosophy*, 2: 13-16.
11. Nabi Elikbaev, 2004. Some aspects of sense of justice of legal culture are in new terms. *Femida*. no. 8-9: 7-9.