

Legal Mentality as a Means to Overcome Formal Legal Nihilism in Russian Society

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Abstract

In this work, the author analyzes the connection between legal culture and legal mentality. He attempts to prove that Russian legal nihilism can be broken if the legislator takes into account the special features of Russian legal mentality and legal sense.

Keywords: legal mentality, legal nihilism, legal culture, legal sense

1. Introduction

As theoretical legal knowledge cannot be considered in isolation from the social and cultural context in which it is being objectively created, legal culture is just a reflection of the general culture and values of a particular society. While analyzing individual elements of Russian legal reality, it would be methodologically wrong to exclude the considered phenomena from the common set of cultural knowledge. It would be interesting in the framework of this paper to analyze the category of legal mentality as qualitatively the most important characteristic of Russian legal culture, to prove that legal nihilism, which is synonymous with Russian legal culture for many researchers, in fact, is nothing more than a rejection by the population of norms of the so-called positive law. And the very rejection is just a consequence of the deficiencies of legislative bodies, arising from their unwillingness or inability to take into account the substantive specifics of culturally legal heritage of Russian people.

We start with explaining the concept of legal mentality. It should be noted that some of the researchers do not agree to include this notion into jurisprudence, arguing that “mentality” itself is a more sociological product and that by introducing it into jurisprudence, we just duplicate the concept of legal psychology as a part of the legal consciousness. In our opinion, this point of view is not entirely justified. It would be desirable to remember that not long time ago, the notion “mentality” was in principle absent in the Russian scientific paradigm. Proceeding from the concept of materialist dialectics, which was dominant in Soviet jurisprudence, all social phenomena were supposed to be the consequences of economic basis. Currently, it is an accepted fact that there are religious, national, and other types of mentalities caused by the archetypes of culture, which are kind of “unconscious, unrealized.” These archetypes have a tremendous impact on the formation of both social regulators as well as of mechanisms for implementing the rules they create.

2. Discussion and Results

First of all, it should be noted that the considered concept is really based on the intersection of sociological and juridical sciences. And in this paper, we are going to prove its primacy as the cultural and historical foundation of modern Russian legal system.

D.V. Menyaylo, a Russian legal scientist who deals with problems of legal mentality, believes that ideas about mentality are deeply rooted in antiquity and have been formed in the course of naturally historical development and evolution of mankind (Menyailo, 2002). Mentality itself represents “vision of the world” or “attitude to the world” (Ovchiev, 2006). The given point of view suggests that legal mentality is being formed on two levels: the collective unconscious or so-called “memory of generations,” which is unique for every ethnic group, and the transformation of the archetypes of the past by the concrete society.

There is an opinion that mentality is “the specifics of the mind.” Such an idea proceeds from the Western understanding of the term “mentality” and represents an understanding of mentality as a stable mindset, having, if not a logical form, then a systemic nature, which is rooted in the material life and widely distributed in the minds of the majority of the population and which directly influences the economic, social, and political relations (The history of mentality in foreign literature, 1996).

R.S. Bayniyazov defines legal mentality as a category that displays the complex morphology of individual and social consciousness, indicating positive and negative, symbolic, figurative, and other phenomena of the legal mentality, through which the legal culture is reflected (Bayniyazov, 2000).

Let us dwell on understanding legal mentality as a special category, which includes definite patterns of behavior in the legal sphere as well as a special system of evaluation of law formed by society and all the phenomena connected with the law and formed on the basis of objective and subjective factors. Then, another question arises: What is the difference between legal mentality and legal consciousness? In our opinion, the first category is broader and should include legal conscience itself as well as all "collective unconscious" and traditions that have been forming in the concrete ethnic group and that create their own unique attitude to law, which will eventually form legal consciousness and legal culture of a society.

Let us try to analyze legal culture of Russian society and explain why in its assessment legal mentality should be the key category, a tool for separating “the wheat from the chaff” in the matter of the so-called “deformations” of modern Russian legal consciousness.

A notorious synonym for Russian legal culture, first coming to the mind of mostly Western scientists, is legal nihilism. Until recently, there were no serious studies dealing with the fact that Russian so-called denial of the right is not nihilism in its scientific sense, but is simply a rejection of law by Russian mentality in its interpretation of the established Western individualistic values and, as a consequence, the rejection and misunderstanding of positive law in general, such an interpretation reflecting primordial American desire to “a higher price to sell themselves” as being constructed on the final price of self-esteem are deeply alien to the typical Russian mentality. We offer to briefly sort out with the concept of legal nihilism, to prove that, at least being taken in its pure form, it cannot be a reflection of the Russian legal culture.

Thus, as a social phenomenon, nihilism is characterized by:

1. Sharply critical, extremely negative attitude to generally accepted, objective (absolute) values;
2. Maximalist approach, intensity, uncompromising of rejection;
3. Absence of the positive program;
4. Destructive principle.

Legal nihilism is neglect or other negative attitude to law, formed in the public mind or psyche of a particular person, which is expressed by denying of its social value and constructive role in ensuring the priorities of the individual and society, in the installation of the achievement of socially significant results by illegal means or their definitely minimum use in practice, or lack of solidarity with the legal requirements, or performance (compliance) of the mentioned requirements only under the threat of compulsion or because of self-interest (Goyman-Kalinskiy, Iwaniec, & Chervonyuk, 2003).

The psychology of legal nihilism is a form of social psychology, which implies the aggregate of feelings, moods, mental make-up of certain groups, classes, nations, their attitudes, traditions, and habits, which emerge spontaneously and have no systematized character. It is the result of dissatisfaction with the existing legal methods established by the state, the lack of an appropriate mechanism, and the conditions of the realization of the law. At this very moment, we would like to subsequently focus our attention, considering as the main factor of the so-called legal nihilism exactly the reluctance of legislator to take into account the peculiarities of Russian legal mentality, and establishment of the positive law, which is uncomprehending and is not acceptable to majority of the population.

To a considerable mass of Russian people, there is a common lack of respect for the law and the desire to get around it, to use the links with the right people, etc. In some cases, the so-called legal nihilism turns into extreme distortion of legal consciousness, becoming the antipode to the rule of law. It is considered that this is indicated by a great level of offenses in our country, especially crime (Rasskazov, 2008). Scientists emphasize that the sources of legal nihilism are not limited by the factors of specifically legal nature, but go beyond the legal space. This phenomenon of the legal life is related to the cultural, political, historical patterns of development of the

country, national traditions, the level of social well-being of people, and the state of society's spirituality (Goyman-Kalinskiy, Iwaniec, & Chervonyuk, 2003).

Thus, the essence of the phenomenon of legal nihilism lies in a generally negative, disrespectful, dismissive attitude to the law, law establishments, law regulations, and normative order.

3. Conclusion

In our opinion, we have paid enough attention to the concept of legal nihilism, to infer from the proposed information that legal nihilism is bad. That is why we consider it possible to claim that the legal culture in modern Russia cannot be evaluated as the legal nihilism in its purest form. Russia is a unique country with a long history and an incredible mix of ethnic groups and mentalities, at the same time being famous for very stiff, rod to the community, spiritual component. Famous Russian philosopher N.A. Berdyaev observes the contradictions in the Russian national character, associated with the connection of the two mentalities in Russia, two different worlds, which leads to the contradictory understanding of the nature of a human and his rights: Russia, on the one hand, is a country of unlimited freedom, it is a rebellious country and terrible in its spontaneity, in its national dionysianism, which does not want to show the form; at the same time, it is a country of great submission, which is devoid of consciousness of individual rights, it is the country of inert conservatism, strong mode of life, and hard flesh. "Russia - is contradictory, antinomic" - writes the philosopher in his work "Fate of Russia." He further adds: "The endless love for people, truly the love of Christ, is combined with cruelty and misanthropy. The thirst of absolute freedom in Christ (Great Soul Hound) puts up with slaves resignation. Is not it Russia itself?" (Berdyaev, 1990)

The independence of the traditions of the Russian legal system, including its difference from the Roman-Germanic legal family, also highlights V.N. Sinyukov. He recognizes the Russian particular originality of legal culture, removes it from the "age-old cultural and legal frameworks" from the specific features of the Slavic legal family, which was formed by countries of Slavic ethnicity.

Lots of legal scholars believe that the path to the rule of law in Russia is the embodiment in the life of the so-called "sincere desire to accept the legal models of foreign countries" and, as a consequence, it is a further convergence of Russian law with the Roman-Germanic legal family. According to them, it does not mean the loss of identity, characteristics, and traditions, peculiar to the legal system of Russia. The essence of this position is that the Roman-Germanic legal family and progressive legal copying of Western models in the XXI century will be the right choice for Russia (Vlasov, 2002). From the point of view of the authors of this category, things happening now in Russia are legal nihilism in its purest form.

In our view, no matter how punning it sounds, it is this very position that became the reason of formal "legal nihilism." The legal system needs to be changed from within and not through the introduction, even ideal, though logically structured as in nature so in content, but not by the norms misunderstood and not supported by people. In our opinion, Russian people have no genuine prejudice to the law, and wish to break it indiscriminately. Russian people since ancient times just perceived law more as truth and justice than just norms coming from the state. And it is this system of evaluation (namely the legal mentality) that should be the basis for the creation of the modern positive law. It is necessary to form the current legislation not only on the basis of objective conditions and alluring Western ideals, but also necessarily take into account the future assessment of population of the law as fair or unfair. Also, it is necessary to keep in mind that the mentioned estimate will be given not at all on the objectivity of judgment, but on the existing values, mainly moral and religious. Russian people have always needed an ideology to which they can and want to believe, the ideology, which is considered by them as fair, good, and proper. The legal state could not become such an ideology. Traditionally repeated by each new Russian president purpose - to achieve the formation of legal state - does not cause anything other but bewilderment and skepticism among the population at best, and at worst - a laugh. In our opinion, the very formation of a new ideology, meeting the requirements of the legal mentality and the existing public mental system of values, should become a turning point for modern Russia. To put it simply, it is only necessary to form a law, consistent with religious and moral values of Russian people, to make everything "in our fair," though from the perspective of Western scientific models, it would be wrong. Obviously, the main goal of any state and the right must be the welfare of the people and no matter how it is achieved, of course, we do not call the methods akin to Nazi Germany, and we are only talking about the fact that if the society in its own territory, without limiting the rights of other states and nations, forms that state and that legal system, that these people want to apply, then it only means that exactly such a law and such a state are the perfect objective way to organize the public-legal life of a particular society. And all this should be precisely formed on the basis of the legal mentality, in our opinion, because the mentality includes a system of images and representations of social

groups (Note 1). And it is the understanding of the future response to the created regulations by the legislator, which will make these acts themselves justified and supported by the national legal spirit.

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Note

Note 1. Russian mentality (the materials of the “round table”) Problems of Philosophy, 1994.

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