КОМПАРАТИВИСТСКИЕ ИССЛЕДОВАНИЯ УГОЛОВНОГО ПРАВА, КРИМИНОЛОГИИ И УГОЛОВНО-ИСПОЛНИТЕЛЬНОГО ПРАВА

LAW AND LEGAL NIHILISM

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The article is devoted to consideration of issues of legal nihilism in modern society. The author highlights the main causes and conditions contributing to emergence of legal nihilism. Among them: disappointment with the way in which the formal rules work or the way in which they are administered; the fact that on the economic level it is more profitable not to accept them, or unwillingness to let humans make law since law is given by God, Allah or another divine being. Based on the analysis of the current state of legal regulation in Denmark, the author outlines current factors influencing the development of legal nihilism in the country. The author refers to them the following. Firstly, decisions made by Parliament are no longer regarded as trustworthy as before because it is no long in the same direct contact with the voters as before where they had to argue their cases directly face to face in the assembly houses. Secondly, most Danish legislation today is not a consequence of discussions in the Danish Parliament but an implementation of EU-legislation. Thirdly, professional lobbyism has become a major factor in influencing politicians, the consequence being that the interests of the lobbyist. Fourthly, judges are not trusted to the same degree as before. On the author's opinion, the optimal way to overcome legal nihilism is returning elements of direct participation of people in decision-making process.

Keywords: legal nihilism, legislative process, Parliament, lobbying, judicial system, European Union, direct democracy.

ПРАВО И ПРАВОВОЙ НИГИЛИЗМ

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Статья посвящена рассмотрению вопросов правового нигилизма в современном обществе. Автором выделяются основные причины и условия, способствующие возникновению правового нигилизма. Среди них разочарование от содержания правовых норм и механизма их реализации на практике, существование экономических стимулов, способствующих отказу от принятия и следованию формальным правилам и нормам или наличие религиозного мировоззрения, проявляющегося в непринятии правовых норм, установленных в светском государстве. На основе анализа существующего состояния правового регулирования в Дании автором выделяются текущие факторы, влияющие на развитие правового нигилизма в данной стране. К их числу автор относит, во-первых, снижение степени доверия населения к решениям, принимаемым парламентом. Во-вторых, снижение степени самостоятельности законодательного органа в условиях европейской интеграции и необходимости имплементации на законодательном уровне решений Евросоюза. В-третьих, возрастание роли лоббистов в законодательном процессе. И, наконец, в-четвертых, снижение доверия к судебной системе. Решение обозначенных проблем, по мнению автора, видится в расширении форм непосредственного участия населения в принятии государственно значимых решений.

Ключевые слова: правовой нигилизм, законодательный процесс, парламент, лоббизм, судебная система, Европейский Союз, прямая демократия.

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Nihilism is — in brief — defined as the lack of belief in one or more reputedly meaningful aspects of life¹. In our context I understand it as the absolute or semi absolute negation and full ignoring of all the normative and legal principles of the needed and prescribed behaviour.

As for my country I have to think hard to find such an approach to law. However, let me start from the beginning:

In modern industrialized societies including mine, the official rules — meaning valid law — exist as a

consequence of deliberate and careful contemplation of the procedures as to how to put up rules on human interaction and how to decide what the substance of valid law should be. Basically, this is done country by country according to national experience and tradition. Such national rules to play by might allow supplements to be made for example on a local basis for identified professional groups or by private parties as a whole (materialized in the acceptance of letting such parties agree what should be valid law between them within the inderogable law set up by the legislator). In the same way international law has developed on basis of agreements between nations as to how to cooperate and interact.

¹ Available at: <https://en.wikipedia.org/wiki/Nihilism>.

The reason for legal nihilism — meaning the refusal of this body of rules — or part of it — might for example be: disappointment with the way in which the formal rules work or the way in which they are administered, the fact that on the economic level it is more profitable not to accept them, or

unwillingness to let humans make law since law is given by God, Allah or another divine being.

Refusal is practiced for example by what we define as extreme political fractions, by religions dissidents by pure criminals,

but it might also represent a giving up attitude by the common man of the formal legal system because he is unable to understand it, finds it contradicts his own values or because he simply has not the resources to abide by it.

However, on most occasions such giving up or refusal of valid law normally does not mean that no rules will apply. Thus human beings only survive by cooperating with each other and the necessary precondition for such cooperation is that the group in question has a set of rules to play by — call it law, custom and practice, religion anything else — so that they are able to act as a collectivity. So in many cases ignoring the official rules does not mean that no rules at all will apply — the official rules will just be substituted by other rules — for example the norms or concrete decisions developed by a “Godfather” within criminal groupings or the sharia-law within Islamic extremist groupings.

Denmark and the Danes have traditionally adhered to the “rule of law” and the same goes for the other Scandinavian societies. Rule of law in this traditional view means that there is a firm tradition as to how (new) law is made and how legal disputes should be settled.

Originally the county counsels — which were regular meetings between all free men in special geographical places — decided what should apply as valid law in the area. Legal disputes were also decided upon by these councils. Later on it was decided to let the King not only legislate but also decide upon legal disputes. In the mid-19th Century the system which still applies was designed in a new Constitution: the legislative power was put in the hands of a Parliament appointed by the Danish citizens, the daily administration was put in the hands of a Government appointed by majority rule by the Parliament, and legal disputes should from then on be decided upon by independent courts.

In general, this system has worked out in a satisfactory way meaning that citizens in general abided to it. In this context it is remarkable that for example the King’s Court might even make a ruling in favor of a peasant against his landowner. Only few examples of grave refusal of the system occurred — such as for example during WWII when Parliament decided to cooperate with the Germans but a wide spread resistance movement nevertheless grew up, which refused such

cooperation and started to launch formally illegal partisan attacks on the Nazi-occupiers.

However, in recent years the system and the acceptance of the rule of law has come under severe pressure from different sides.

Decisions made by Parliament are no longer regarded as trustworthy as before. Thus it is obvious that Parliament majority over the last 30 years has moved away from the previous ideal where decisions should be based upon the best possible knowledge of the facts which could be acquired. Today the facts — or what people find to be the facts — have been pushed more in the background. The reason might be that the MPs are no long in the same direct contact with the voters as before where they had to argue their cases directly face to face in the assembly houses. The media have come in between and the worries of the journalists might not be quite the same as those of the common man. Furthermore, most Danish legislation today is not a consequence of discussions in the Danish Parliament but an implementation of EU-legislation. Moreover professional lobbyism has become a major factor in influencing politicians, the consequence being that the interests of the lobbyist — or the ones who hired him — are given priority even at the expense of voters simply because the MP is not able to see how he is influenced by undue means.

Finally, at least within some circles judges are not trusted to the same degree as before. Thus the judges’ task has become more and more difficult over the years due to the explosion at formal legislation which has now ended up in a body of rules so large that it is hard to handle even for professionals and the more for the common man. In this situation, since the judges have to rule according to the law, they often have to rule in a way which common men simply don’t understand or do not accept. On top of this, a lot of rules have been put up according to the standards of for example the EU which might fit the ambitions of professional environmentalists, humanitarians and human right ideologists etc. but which obviously do not fit the needs of society. And finally, political correctness has in some cases been transformed into formal rules which should be applied by judges even if their background does not allow them to understand the difference between political correctness and facts. The result is that some people feel that judges now interfere in their basic political freedom including the freedom to have an opinion different from what is political correct for the time being.

This means that respect of law has diminished and some people even set up their own rules to live by. This goes not only for criminal gangs and religious extremists which per definition do not accept to abide by the rule of law set up by Parliament. In Denmark and Norway it has not gone quite as far as in Sweden where respect has reached such a lowpoint that some local areas are now out of control of the Swedish State, sabotage on buildings expected to be asylum centers is common and even the Swedish TV is subjected to sabotage. But in the horizon

it is easy to see that the same development might soon take place in the whole of Scandinavia.

How do we counteract this sad development?

Some say it is a question of strengthening punishments for breaking the law. In my view this will not work unless we are dealing with plain criminals. The only thing which will work is to make the legislative system run according to the principles upon which it has been built so that

legislation will again mirror the actual needs of ordinary people and not the ideas of an — maybe distorted — elite so that people feel they themselves are involved in the legislative process. Sociologists will be better at explaining what makes people respect law. But for my part, I believe that rules made by people themselves or by their involvement will be respected more easily than rules made by somebody else.

REFERENCES

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