

# Legal Nihilism in the Context of the Implementation of Amnesty and the Social Consequences of its use (on the Example of the Russian Federation)



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**Abstract:** *The article deals with the peculiarities of the interaction of such legal phenomena as legal nihilism and amnesty. Based on a comprehensive analysis of these phenomena, the authors substantiate the opinion that the issue of an amnesty act can have both positive and negative social consequences, which reflect the dual nature of legal nihilism: the combination of both destructive manifestations and a positive impact on social relations.*

**Keywords:** *amnesty, legal nihilism, law, forms of legal nihilism, social consequences of amnesty.*

## I. INTRODUCTION

Over the past centuries, nihilism has represented a certain worldview that has a significant impact on the development of society. Nihilism (from the Latin. nihil – nothing) is the philosophical position, which casts doubt on the generally accepted values, ideals, moral norms, culture, and all forms of public and state life. One of its types is legal nihilism, the emergence of which cannot be called an accident since this phenomenon accompanies the right. The development of legal nihilism is associated with the changes in the level of socio-economic status of society, as well as the forms of government, the emergence of various branches of law, and the formation of the main legal institutions. Legal nihilism has a wide incidence, some segments of which we will analyze in the framework of this research.

## II. METHODS

The methodological basis of the research consists of the dialectical method, involving the consideration of objects in relation to each other as a complex. The following general scientific methods were used in the course of the research: the comparative legal, specific sociological, and statistical methods, as well as the methods of formal logic (analysis, synthesis, deduction, induction, etc.).

## III. RESULTS

Legal nihilism is a social phenomenon that generates constant discussions in scientific circles about its very concept, essence, causes and forms of existence, and degree of influence on the formation of legal culture and legal consciousness.

Legal nihilism is considered by us as "a multifaceted social phenomenon, dialectically immanent to law, denying it in general and its individual values in particular, having diverse forms of manifestation, containing both destructive and positive qualities" [1]. The study of its genesis suggests that legal nihilism is a special cyclical phenomenon, currently reaching the greatest manifestation. Society accompanies this phenomenon, which reflects certain socio-economic, political, cultural, and historical conditions.

Any society eventually asks questions concerning the social value of law, its essence, purpose, role, and functions. Inevitably, there are opposing positions that expose not only positive but also negative qualities of this phenomenon. Consequently, the emergence, development, and formation of legal nihilism is not an accident, but a real necessity caused by a natural connection between these two phenomena. The struggle of opposites is based on denial and aims to determine the qualitative parameters of the phenomenon in order to establish the truth through contradictions. Since denial exists in the name of creation, legal nihilism exists in the name of the law. Dialectical materialism gives us the opportunity to approach this issue from the standpoint of the law of unity and struggle of opposites, according to which the development of objective reality and the process of its cognition are carried out by splitting an individual into different and opposite [2].

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The phenomenon of legal nihilism clearly demonstrates the polarity of certain essential features of the same phenomenon. Legal nihilism has various forms of existence, and one of the classification grounds is to allocate it depending on the legal impact on positive legal nihilism and negative legal nihilism, subdivided into legal nihilism in the form of offenses and in the form of crimes. Legal nihilism in the most general form is a destructive phenomenon of social life, while the offense is its most dangerous form. According to the degree of public danger, offenses are divided into crimes and misdemeanors. The crime carries a high social danger, as it encroaches on the basic rights, freedoms, life, and state system. Misdemeanors have lower social danger.

We agree with the opinion of Professor N.I. Polishchuk, who believes that if a misdemeanor or a crime is committed intentionally, these actions should be qualified as ideal legal nihilism. If innocent infliction of harm was committed or a crime was caused by negligence, this cannot be considered as legal nihilism, since the person did not violate current legislation intentionally [3]. Regardless of the reasons for the offense, they are based on disrespect for the law, disbelief in its effectiveness and efficiency. From the nihilist point of view, only deliberately committed offenses should be attributed to the forms of its manifestation since in this case, the person is aware of the social danger of the act, but neglecting this, commits an infraction. We believe that legal nihilism can have a dual manifestation in this sphere: active and passive. The active form is the commission of an intentional offense by a person, without taking into account the fact of action or inaction. The passive form is considered as a condescending attitude of society towards the offenses committed. We believe that both of these forms are dangerous because the absence of public censure in some cases stimulates legal nihilism and promotes the admissibility of such behavior.

The study of this phenomenon from the perspective of dialectical materialism suggests that legal nihilism is not always a destructive phenomenon. It is not only evil and destruction but also has a creative principle. It is obvious that the negative side of legal nihilism can be traced more clearly; the positive aspects are less noticeable.

Consideration of legal nihilism on the positive side is expressed in the fact that legal nihilism reflects the level of development of society, the stability of legal regulation. A high level of legal nihilism is a kind of indicator showing the problems existing in the legal regulation and thereby indicates the state of the necessity of their resolution, that is, acts as a stimulus, contributing to the improvement of the legal system. It should be noted that in this case, we do not claim the absolute positive aspect of legal nihilism, we speak about its action, influence on legal regulation [1].

As noted above, the most dangerous forms of legal nihilism are violations of social relations, which are protected by criminal law. Every time a criminal act is committed, the state responds to it accordingly, having the proper powers and the necessary coercive apparatus in the person of law enforcement agencies. Implementing this law enforcement function, the state seeks to restore social justice by bringing the perpetrators to various types of legal responsibility. However, there is such an archaic institution as "amnesty" in

the legal system of the Russian Federation and many other countries, the implementation of which often contributes to the negative embodiment of legal nihilism, and in the most dangerous forms of its manifestation. In this regard, scientific disputes about the positive and negative qualities of amnesty continue to be the most controversial in Russian and foreign theoretical and applied jurisprudence. Researchers have repeatedly entered the controversy concerning the feasibility and reasonableness of the existence of this legal phenomenon for many centuries.

Currently, the Russian Federation is implementing a number of legal reforms aimed at improving the national penitentiary system, humanizing the conditions of serving sentences, bringing the legal status of persons in places of detention in accordance with international standards [4]. These reforms are also connected with an increase of guarantees of observance of the rights, freedoms, and legitimate interests of convicted persons, reduction of recurrence of crimes, development of a system of socialization of the persons released from places of detention.

However, statistics of recent years show a steady increase in relapse among amnestied persons. The study found that every tenth person released under an amnesty from places of detention and every fifth person who was removed from the register of the penitentiary inspection committed a repeated crime within two years from the date of their release. This fact clearly demonstrates the nihilistic attitude of this category of persons to generally accepted legal and moral norms. However, the moral component of the law is also designed to have a significant impact on the formation and development of legal consciousness and legal culture of convicts, their behavior, self-esteem, beliefs, motives, etc. [5]. This, in particular, explains the negative attitude to amnesty on the part of many scientists and practitioners. In this situation, it is appropriate to recall the famous aphorism of the outstanding criminologist and jurist C. Beccaria: "To shew mankind that crimes are sometimes pardoned, and that punishment is not the necessary consequence, is to nourish the flattering hope of impunity, and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The prince in pardoning gives up the public security in favor of an individual, and, by his ill-judged benevolence, proclaims a public act of impunity" [6].

What contributes to the publication of this kind of legal documents, and what goals are guided by the highest state authorities and officials authorized to develop relevant projects and adopt them? Based on the study of the reasons for issuing acts of amnesty in the entire history of Russia and analyzing their content, we can conclude that each of them was aimed at achieving certain goals and solving the tasks facing the state and society [7]. Having understood some of the tasks that can be solved with the help of the amnesty, the question arises about their actual social utility. The task of declaring an amnesty for the discharge from places of detention may be subject to valid criticism.

A state that is not able to provide for the maintenance of prisoners in penitentiary institutions due to the lack of the necessary material and living conditions or budget savings, resorts to artificial regulation of their occupancy through amnesty. Meanwhile, persons released on this basis and not having received full correctional impact return to the society, as a result of which the idea of impunity and permissiveness is formed in the minds of amnestied people, the passive form of legal nihilism develops in the society itself, and the authority of the government falls.

The declaration of an amnesty for the purpose of stopping armed resistance, insurrection or riots, achieving or consolidating peace, releasing of hostages, and exchanging war prisoners is unclear. On the one hand, acts of amnesty issued for these reasons may prescribe not to initiate criminal proceedings or exempt from criminal responsibility and punishment persons who put up armed resistance, committed serious and especially serious crimes during the conflict, including those prohibited by the Geneva Conventions. On the other hand, amnesty in such cases is an effective and sometimes the only right decision for establishing peace and saving lives [8]. As M. Pensky correctly notes, amnesties of such types are between politics and law, they are one of the most controversial both from a moral point of view and from a legal or political point of view [9].

Amnesty may also have nihilistic consequences when declared for the release of political prisoners, and not simply in terms of the interests of justice and society, but for the amnestied persons themselves. Often, political accusations are far-fetched, and acts committed by individuals based on their political views, as well as on the basis of defending the interests of the opposition or the previous government, in many cases do not contain evidence of a crime. As a result, the new ruling elite or the current authorities grant them forgiveness, not for humane reasons, but to exclude their right to rehabilitation and proving their innocence in court.

The emergence in the state of tasks to release persons, whose acts have lost public danger after the change of power, or to release from punishment or its mitigation groups of convicts, against whom sentences were too severe, indicates the shortcomings of the current criminal legislation. A change in the law takes place in a more complex procedure than the adoption of an act of amnesty and requires more time. Therefore, initially, preference will be given to amnesty, rather than decriminalization.

The point of view about the educational impact of amnesty has become widespread in the scientific literature. O.V. Levashova considers amnesty as a comprehensive incentive legal institution, serving as "a means of positive social and legal impact on people's behavior aimed to generate and maintain socially significant activity, as a result of which the desired behavior of the subject is rewarded and the mutual interest of the individual, society, and state is realized" [10]. However, we believe that it is impossible to talk about any educational component of amnesty if its announcement generates negative consequences for society and the state, which are expressed in the violation of the rights of victims and in release of persons inclined to commit repeated crimes, and in some cases – denying and despising norms and rules of the community.

It is worth noting the absence of special statistics in the Russian Federation that consider the level of criminological recurrence of persons released under an amnesty. Therefore, it is necessary to consider private research to obtain such information. At the same time, investigating the repeated crime of amnestied persons based on the results of the application of the Resolution of the State Duma of the Federal Assembly of the Russian Federation of April 24, 2015 No. 6576-6 SD "On declaring an amnesty in connection with the 70th anniversary of the Victory in the Great Patriotic War of 1941-1945" in certain constituent entities of the Russian Federation, we found that within two years from the end of the period set aside for the execution of the amnesty, 15.89% of those released under the amnesty committed new crimes.

It is noteworthy that from the total number of convicts, to whom the act of amnesty was applied, two categories of persons who committed the highest number of repeated crimes can be distinguished. The first category includes persons released from the imprisonment, the unserved part of the sentence of which was less than one year on the day of the end of the amnesty (paragraph 5 of the amnesty decree of 2015). Among this category, the proportion of amnestied persons who repeatedly committed crimes made up of 14.58%. For comparison, in the group of convicts sentenced to imprisonment, who were released under section 1 and section 3 of the amnesty decree of 2015, the rate of repeated crime was 3.7% and 3.01%, respectively.

The second category of persons with the highest level of recidivism is formed by convicts on probation, convicts who, until the date of the entry into force of the amnesty, had the unserved part of the punishment replaced with a milder type of punishment or the serving of punishment, which was postponed, as well as those sentenced to non-custodial sentences (paragraph 4 of the Amnesty Decree of 2015). 18.3% of the total number of convicts amnestied on this basis committed new crimes.

Thus, the amnesty did not receive a comprehensive educational effect. As of 2015, approximately every sixth convict did not perceive it as state forgiveness with the opportunity to return to a law-abiding life and committed a new crime. The high recurrence rate among amnestied individuals is a manifestation of legal nihilism.

A survey of law enforcement officers shows that 55.3% of convicts regard the amnesty "as a happy coincidence", 25.6% – "as justice, they must be released", 10.6% – "as state trust and a chance to improve", 8.5% – "as parole".

To the question "What does the issuance of acts of amnesty contribute to?" 70.2% of the law enforcement officers answered that amnesty contributes to the growth of crime, 17% – to the prevention of crimes by all citizens, 8.5% – to the reduction of crime. Only 4.3% believed that amnesty helps to prevent the commission of crimes by convicts.

To form the final opinion, we asked the following question: "Is it justified to issue periodic amnesty acts or is it sufficient to apply the types of early release from punishment already available in the criminal law?"

Answering this question, 61.8% replied that the criminal law contains existing provisions that allow fully or partially exempting a certain group of persons from legal liability. Only 38.2% of the respondents stated the need for preservation and development of this legal institute.

#### IV. CONCLUSION

Summing up, we can state the following. Legal nihilism in the context of the implementation of amnesty may show both positive and destructive qualities. For example, positive qualities manifest themselves in the event of issuing acts of amnesties for the release of persons whose acts have lost public danger or for which the court imposed too harsh penalties. Such amnesties indicate the shortcomings of the current criminal legislation or its individual institutions and, as a rule, precede their change (decriminalization of individual acts, easing sanctions, etc.).

Destructive properties are mainly expressed in the negative social consequences of the use of amnesty. Thus, the study of negative social consequences, including criminological recurrence of persons released under the amnesty in 2015, demonstrates a high level of repeated crime among them and a tendency of its growth, as compared with previous amnesties. In turn, this contributes to the growth of crime rates among those previously convicted and those not convicted. It also undermines the authority of law and the state in the eyes of society, which indicates the formation of an active and passive form of legal nihilism. Consequently, in the preparation and adoption of an act of amnesty, the highest state authorities are required to set clear goals and coordinate with the interests of society. In order to prevent negative social consequences, it is necessary to qualitatively form categories of amnesties using a detailed set of legal restrictions that can prevent the release from criminal liability and punishment of persons with a high level of legal nihilism.

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