



The relevance of legal awareness distortions in risk and innovative management

La relevancia de las distorsiones jurídicas en el riesgo y la gestión innovadora

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ABSTRACT:

The aim of this work was to find out how legal awareness distortion affects both law violation and protection. The predominant methods were the content (qualitative) analysis and detection of regularities. According to the results, legal risk management should monitor and assess the types and stages of legal awareness distortions of lawbreakers, crime victims, lawyers, and law enforcement officials. The developed recommendations are innovative organizational and legal means for effectively overcoming risky situations and promote law-abiding behavior on organizational and governmental levels.

Keywords: risk society, legal awareness distortions, legal nihilism, individual legal consciousness

RESUMEN:

El objetivo de este trabajo fue plantear como la distorsión de la conciencia jurídica afecta tanto a la violación de la ley como a la protección. La metodología se fundamentó en un análisis de contenido (cualitativo), basado en la detección de regularidades. Los resultados indican que la administración de riesgos legales debe monitorearse y evaluar los tipos y etapas de distorsión de la conciencia jurídica de los infractores de la ley, las víctimas de delitos, los abogados y los funcionarios encargados de hacer cumplir la ley. Las recomendaciones que surgen del trabajo es que se debe ser organizativos y legales e innovadores para superar efectivamente situaciones de riesgo y promover conductas respetuosas de la ley a nivel organizativo y gubernamental.

Palabras clave: sociedad del riesgo, distorsiones de la conciencia jurídica, nihilismo jurídico, conciencia jurídica individual

1. Introduction

The "risk society" concept illustrates how human-made circumstances place people at risk, reducing their ability to defend their interests and rights. Risk management system bases on

the knowledge on what makes humans vulnerable to legal risks, how to assess legal risk vulnerability, having the potential for harm or loss?

Risk science is an emerging interdisciplinary research field. This paper incorporates its quantitative approach, analyses individual, local and global scales, and integrates the perspectives from social sciences (Cutter, 2010; Sarikakis & Winter, 2017) and humanities (Salnikov, 2014) for covering the research gap in the understanding of how legal awareness distortions impact the level of legal risk vulnerability and what management and innovation tools can preserve individual and society from risk and law violations.

Risk management consists of risk analysis (the uncertainties), risk evaluation (comparison and calculation), risk treatment (control and communication), risk appraisal (identification), characterization and assessment. Awareness is a factor changing attitudes and mentality (Narits, Kaugia & Pettai, 2016, p. 128), and this paper uses the concept of legal awareness for a demonstration of how to analyze and improve legal risk vulnerability associated with legal awareness distortions.

The existing typologies of legal risk are built, as a rule, depending on the legal sector:

- obligatory (contractual, insurance, reputation);
- administrative (Mišćenić & Raccah, 2016);
- labor (production and economic) (Montenegro and Valbuena, 2018, p. 2);
- financial – banking, budget, tax (McCormick, 2010).

In addition, the legal risk have different types according to:

- the stages of legal regulation (procedural; rule-making and law-implementing (law-enforcement, interpretation, penitentiary) (Fasterling, 2017),
- the degree of reasonableness (reasonable, partially justified, adventurous) (Dyatlov, 2006, p. 46);
- the degree of legality (lawful and illegal) (Moosa, 2007);
- forms of risk (experimental, extreme) (Allet, 2016),
- consequences (associated with legal liability, negative consequences, and not related to legal liability) (Chapman, 2011),
- degrees of typicality (systemic and non-systemic) (Salnikov et al., 2014, p. 181),
- degrees of possibility of assessment and legal regulation (predictable and unpredictable).

However, the content of the above-mentioned typologies suggests that all legal entities are subject to this or that legal risk, regardless of disposable income and the available power.

From here, two hypotheses arise:

- (1) the concept of legal risk is interpreted in different ways at all levels of legal consciousness — individual, group (including professional) and social (especially ideology);
- (2) the variety of legal risk manifestations associated with the specifics of various levels of legal awareness indicates a wide range of possibilities for researching the not yet articulated features of various types of legal awareness and their interrelations with various types of legal risks.

The significance of the study is that the identification of these relationships and dependencies will contribute to the development of methods for predicting legal risks and their prevention.

2. Methodology

Legal conscience as an active reflection and construction of legal reality is a system with the three main interacting subsystems: the idea of law, the law, and the legal life. For this study, we chose the majority of legal awareness deformation types (Tkachuk, 2011), namely legal infantilism, legal idealism (romanticism), legal dilettantism, legal nihilism, adding a new type of contemporary risk society's deformation, abuse of right (Utyashev & Utyasheva, 2010).

We use Murray Stein's idea that the formation of a personality includes both differentiation

and integration of consciousness and “passes stages, each of which characterizes a certain type of relationship to “the Other” and a way of interacting with it, a corresponding level of unity of the personality and integration of society” (Stein, 2013). Sirazetdinova applied it in relation to the legal awareness, since the legal subject also develops, whether it is a separate person or a group subject (Sirazetdinova, 2016, p. 14). We are developing this approach in order to show how the formation of legal consciousness includes successive stages of differentiation and integration and changes in the ratio of the subjective significance of its three main components: ideas of law, the law and the legal life. Deviations from the norm in legal awareness lead to various distortions, which in various degrees expose the risks to both the increase of individual deformations, and everyone with whom the person enters into legally significant situations and to the whole society.

The research materials include the cases of worldwide legal practice, both documents and media.

3. Results

3.1. From legal idealism and nihilism to the abuse of law

In our approach, the systemic (by the degree of typicality) and predictable (by the degree of assessment and legal regulation) types of legal risk are sufficiently amenable for their minimization. As can be seen from further, legal risks are associated not only with the deformations of legal consciousness, but also with the lack of legal capacity.

The figure presents the stages of increasing the complexity of legal awareness distortions that need risk regulations and correlate with the growth of sophistication, argumentation and grounding non-legal activities. According to Lorenzo Cotula, “laws are usually published in the official gazette, few people outside legal circles have access to legal information, illiteracy, economic barriers, language barriers, social taboos” (Cotula 2007, p. 48). However, the knowledge can be used for both countering and making illegal activities, which proves the necessity of managing collective legal awareness changes. The good tool is formation of the sense of justice that reflects a harmony of socio-legal human nature (Garcés et al., 2018, p. 13).

Since any consciousness is already divided by definition – into self-consciousness and that which consciousness reflects – “world”, (i.e., the object and the subject of consciousness), we use the “non-differentiation” characteristic not in an absolute sense, but in the meaning of a “lack of differentiation”. The initial stage, “external” aspect of undifferentiation, manifests itself in a weakly differentiated community, in the absence of significant differences from other individuals or a community (first of all, with respect to interests and freedom).

The “inner” aspect of non-differentiation is inseparability from other forms of consciousness. The initial stage of both society and the individual development characterizes by the inseparability of “mononorm” as a manifestation of the syncretistic mythological consciousness. At the individual level, it corresponds to the early childhood, when the adults explain that illegal activity at the same time is bad in the moral sense, ugly in aesthetic and prohibited in practical terms.

The second stage begins with the isolation of the individual and the emergence of an “individual zone of fixed social responsibility with which the individual identifies himself”, which characterizes the external relations in society” (Sirazetdinova, 2016, p. 15).

At the initial level of development of legal consciousness, theoretical and common sense of justice (typically in the case of legal idealism, in which the idea of law and the system of law are not sufficiently differentiated), individual and collective (social and group – more often in the case of consistent legal nihilism) are not yet separated. These two opposite poles – legal idealism and legal nihilism – are formed within three basic models of the relationship between the individual and society. The legal idealist is distorted by social escapism and conformism, while the legal nihilist – by social antagonism. Other types of legal awareness deformations are located between these poles.

Undifferentiated legal awareness is susceptible to many risk factors due to the smooth inclusion of the contents in the individual consciousness – intentional or accidental (Sirazetdinova, 2016, p. 14-15).

Legal idealism is characterized by a reduction of legal reality to the idea of law, sometimes in combination with the law itself, insufficiently formed ideas about legal life or underestimation of illegal and anti-legal practices, which is associated with a lack of experience. Anti-legal phenomena, being present only in theoretical knowledge, are near to illusions about the possibility of all legal issues in legal ways. The idea of law is not sufficiently coupled with the possibilities of its implementation in legal practice. An example from the branch of criminal law was the negligence of deputies of the State Duma and other officials of 1990s, when they did not give away their own business interests despite the threats and violence, relying on the status of deputy immunity; more than 70 deputies of Russian Federation in 1991-2009 were subjected to violence and even had become victims of murder (Bizyukin, 2009).

Familiarization with the norms and idea of law reduces the risks of the anti-legal behavior of legal idealists, since their legal thinking and behavior are carried out within the framework of a legal idea and law. On the other hand, it is the absence, lack or distortion of ideas about legal life (and not the lack of special legal knowledge and skills) in the overwhelming majority of cases that leads to the realization of legal risks in relation to legal idealists.

The development of the idealistic sense of justice with further corrective harmonious interaction within the legal reality clarifies idealist's views about the law and allows to successfully navigate in legally significant events. Otherwise, there are three main options:

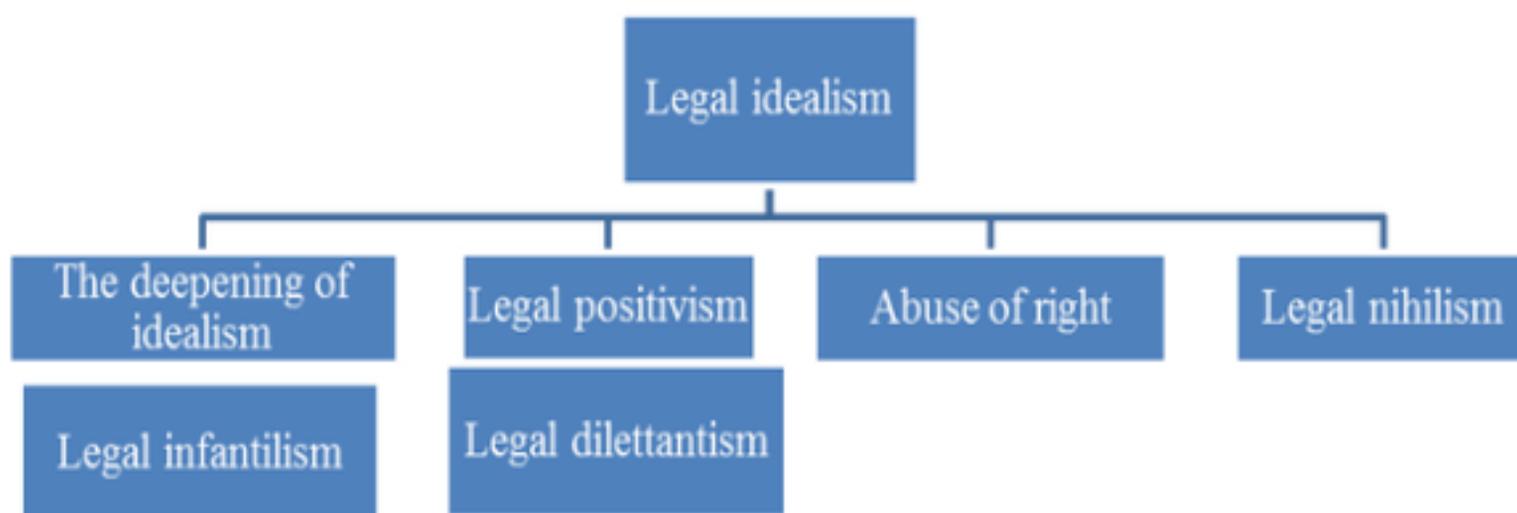
(a) the deepening of legal idealism, which, coupled with an insufficient knowledge of the individual, leads to legal infantilism (passive version), or to legal dilettantism (active version); this option is less likely for those who occupy "field" or "cabinet" positions in law enforcement;

(b) the formation of legal positivism, "reducing the law to the system of normative legal acts, and the person and society to duty bearers are" objects of law "(Sirazetdinova, 2016, p. 18). The legal idea loses its former significance at the same time or compensating for an excessive increase in the role of legal norms in the assessment of situations connected with law.

(c) the legal nihilism is formed in the case of both the depreciation and underestimation of the idea of law and legal law, as well as the active assimilation and application of anti-legal values. For a former legal idealist, nihilism begins its development from the second level (Figure 1).

Figure 1

The legal awareness distortions coming from legal idealism



Authors' development

The first level of formation of legal nihilism is the internalization of ready-made antisocial behavior patterns, reflecting the ideas of opposing the fundamentals or norms of law. This characteristic is common for representatives of the lower ranks in criminal communities – "bruises" and "denying", as well as their victims, who refuse to file complaints on them and

act as witnesses out of fear and conviction in their powerlessness against criminal arbitrariness or abuses. This includes all subordinate criminals in their activities and thinking. Disrespect for any legal entity (citizens, professionals, the state) is complemented by a high willingness to transgressions and the lack of separation of their own interests from the interests of the group and its ideologues. Thus, while legal idealists sometimes simply cannot understand why others violate legal norms, knowing about them, a legal nihilist seeks to understand these norms precisely in order to learn how to violate them with impunity – for example, through finding “loopholes” in the law. This suggests he certain ways of managing their legally relevant activities.

The second level is distinguished by rationalization, laying down the “grounds” (matters or reasons) under the legal subject’s nihilistic values. For this, the carriers of the nihilistic deformation of legal consciousness “expose” the idea of law as impracticable, and extrapolate the shortcomings of the positive law to all other components of legal reality. This idea is also present in the rhetoric of the higher levels of criminal communities that carry out the processes of planning the activities of criminal communities and the distribution of resources (“brigadiers,” “fenders,” “watching”). The ideology is also assimilated by subordinates of “foremen” who do not have sufficient managerial skills or ambitions for a “vertical” career in a criminal community.

Since this is an image created for the expansion of power, the competition and conflicts between representatives of this criminal layer arise. Those who resort to help – asking for protection from other groups or businesspersons to resolve the conflict situation. At this level of legal nihilism is the mindset of offenders, covering up their reluctance to protect other members of society and the rule of law (criminal inaction), as well as not missing their own benefits from conniving at offenses and complicity. In groups led by negative leaders (Alvinus, Johansson, & Larsson, 2016), the motives of their own and other people’s illegal behavior are covered up with “wrongfulness”, “victimization behavior” or other “defects” of the victim. The systemic nature of the crimes gives them a kind of “sanctioned”, so the persecution of the victims joins it. Most often, victims of sexual harassment, hooliganism, slander, or a system of extortion as a particular case of corruption.

The carriers of the legal nihilism deformation, who have reached the third level of distortion of the idea of law – remain unknown or, at best, elusive in relation to law enforcement agencies, often leaving the country due to illegally acquired funds. They are highly adaptable, argue their views in such a way that even the lawyers recognize their arguments as convincing; able to “educate” entire communities and generations of organized groups. Their activities are quickly legalized and require the greatest efforts to catch; however, even after the most high-profile cases widely reported in the media, they still have some chances to reduce their penalties.

As can be seen in the above text, legal nihilism, likewise idealism, expresses itself in passive and active forms. It also does not necessarily represent only a complete and consistent rejection of the idea of law and its projections in the form of legal acts and actions of subjects of law, contempt for law enforcement and judicial activities.

At the second level, nihilism gets along with interaction with law enforcement officers, tolerant attitude towards law-abiding citizens. Corruption relations arise here, hybrid social positions of “werewolves in uniform” and “thieves in law”, which cause the greatest harm, reaching the third level of legal nihilism deformation at the higher level of legal awareness, when at any time and in any place the subject becomes able to create or take high positions in an organized criminal community. This explains the loud conflicts of previously hiding gangsters – they do not even set aside time for adaptation after a few years of absence in contemporary rapidly changing risk society, but immediately join it.

In addition, in all cases of legal nihilism, the following steps can be distinguished:

- everyday nihilism (acceptance of some or most of the anti-legal phenomena and events as normal and “natural”, not worth the resistance and efforts to detect and suppress);
- adaptive nihilism (personal involvement in illegal and criminal activities due to “pressure of circumstances” or features of the social environment);

- consistent nihilism (steady and resisting education, adhering to the principles of denial of the law in all legally significant activities).

As the legal consciousness differentiates, it can come to a split state, and then the deformations of legal consciousness will contain the same elements, but not dissolved in a single whole, and consisting in conflicting relations.

In the first version, the subject is forced to coordinate his conflicting ideas of law in a single system, while interpreting legally significant events and legal actions, for instance:

- a professional lawyer, or a law enforcement officer has a more complete and legal picture of legal reality due to the presence of relevant experience. At the same time, he does not find sufficient grounds for activating the norms of law (Virna, 2015) in all cases when it is necessary to bring an evidentiary base, and sometimes to start a case or investigation.

- everyday nihilism includes contradictions of the theoretical and everyday levels of legal consciousness: the subject agrees with the legal idea of law and with the legal system as a whole, while criticizing their individual aspects and adapting to the realities of legal life, including anti-legal phenomena. Numerous examples are submission to offenders, refusal to assert rights, the use of gaps in legislation. For example, till the introduction of electronic cash in 2017, the texts of paper cash receipts burned out in the sunlight, and businessmen could manually write any amount of revenue.

- a criminal explaining his anti-legal actions by "attempts to restore the justice". A middle-class criminal builds a controversial version of the "legend" to hide his own illegal actions and shield the leadership, which is a destructive attempt to overcome the contradictions of legal life by going beyond its limits. This is justified by the division of people into "their" and "alien". The shortcomings and inefficiency of legal regulation "force" them to "restore the social order themselves" (the concepts of "looking after citizen", "the roof" defending business from complex social circumstances, have associations with protection, but all of anti-legal character).

However, the punishment received is still the result of a legal restriction on the liberty of movement, although the ideology of the criminal community is that it is "free" from the obedience to general social rules, including law. The mistake of such thinking is that the ultimate going beyond the limits of legal life is impossible, and this ideology places criminals above the legal system.

The legal dilettantism (amateurism) characterizes the subject of law having a partial knowledge and understanding of the legal system, the concept and ideology of law, but does not identify the corresponding situations in life.

The legal conformity is that the judgments and actions correlate not with the law but with the most common system of behavior and interpretation in the certain environment in which the legal subject finds itself at the moment. He situationally "masks" under the current group ideas and demonstrates their full acceptance, even knowing about the mistakes, risks and negative consequences of certain legally relevant actions, with the aim to not be rejected. Since the social environment is very heterogeneous, conformism must have the greatest variety of subtypes compared with the deformations of legal consciousness discussed above. Thus, the actions of the conformist in legally significant situations are largely determined by social affiliation and, at the same time, are highly adaptive.

The governmental and organizational **legal risks regulations**, therefore, should take into account that individual as an element of the system of society moves through individualization into a personality, a relatively independent system. The holistic sense of justice sees any fact of legal life in the unity of its overt (facts, evidences) and hidden (motives, ideology) components, which is especially necessary for law enforcement officers. A person who successfully orientates himself at all levels – the idea of law, the system of law, and the everyday legal life including its anti-legal phenomena, where things are presented not as they are for the lay people, but as they really are, is not typical, but a key figure in both illegal and law enforcement activities.

A person with a holistic sense of justice can be both a criminal "authority", a "werewolf in uniform", and a human rights activist or a law enforcement officer; less often – not engaged

directly in professional legally significant activities. They do not choose any options from the spectrum of interpretation of legal events offered by the media and interested persons, eyewitnesses, since there are specific goals behind each such event; they consider each legal fact as a result of actions that have their logic. More often, these are representatives of professions and areas of knowledge and occupation, which to some extent go beyond the boundaries of social norms and operate with broader layers of reality, studying the general of law in philosophy, psychology, and sociology. And finally, it is with the help of concepts that some people are able to influence others through influencing legal ideology and psychology.

4. Discussion

In accordance with the statement that all systems generate legal implications that need to be managed (Rejas-Muslera, Cuadrado-Gallego & Rodriguez, 2007, p. 118), the purpose of study was to develop practical recommendations for improving the legal risk management system, using the means of theoretical justification for the need to study alternative ways to resolve contradictions of risk society's complicated legal circumstances. With its developed legal awareness distortions evolution theoretic model, the paper shows how to overcome the deformation of legal awareness with aim to reduce current and future legal risks, proving that ideology and psychology levels of risks regulations play a great role in risk management, in addition to general managerial rules and document processing issues due to the described variety of legal risk manifestations associated with the levels and stages of legal awareness development and distortion.

Before we can minimize the legal risk and strengthen the legal disaster preparedness, we need to have an adequate information on the groups of risk and their awareness vulnerability, which depends on their social circumstances, interactions and relationships systems. This proves the first research hypothesis.

The recommendations on the formation of legal awareness in a risk society are as follows. First, the development and adoption of a program to combat organized crime and prevent the commission of offenses is needed. It should include control over the leaders of criminal communities and high-risk groups, isolating them from both the young people and other offenders in designated areas. Special measures to control their use of any communication means protection would protect private and state enterprises from prosecution and racketeering. Debugging and launching a unified information system on crime, including multilingual retrieval systems such as suggested by Peruginelli (2008) where everyone could learn about the activities of those with their abuse and crimes, is required.

Disfunctions of political and legal institutions undermines the foundations of the rule of law and causes a crisis of confidence with the deepening deformations of justice, provoking active and passive forms of offenses. Even the presence of international law does not prevent violence, violation of legislative guarantees in relation to citizens, wars, territorial and economic expansion on the part of states and corporations. However, if actions to punish criminals are taken by ordinary citizens without governmental decision, the full power of legal, social and ethical condemnation will fall upon them. In modern society, manipulative legal conformity is most common as risk-oriented behavior and is subject to external influence. Therefore, its study is the most promising, because it is susceptible and has tendencies to agree with legal and non-legal means of legally significant actions, and to avoid legal life when it enters an environment where escapism practices are quite common.

5. Conclusions

The findings of the conducted study suggest that that the legal risk in contemporary society is bounded with the different types of legal awareness deformations. The most important is the shift from ordinary and predicted forms of legal nihilism to the combined and sophisticated forms of the abuse of right. The complexity of contemporary legal awareness deformation forms require managerial initiatives to collaborate collective legal and educational activities, to share legally relevant and risk preventing information, and to undertake joint risk-reducing activities at the global, regional, local levels of society, not

confining with the legal profession representatives.

The two priority actions on the governmental level are determined, which can be included to the lists of the indicators of risk management quality. These include:

- Making risk minimization a social priority, with the emphasis on legal risk reduction;
 - Systematically identify, assess, and monitor legal risks coming from legal awareness distortions of citizen, legal professionals, and criminals;
 - Build a legal risk culture of safety and resilience with the developed, realistic, achievable idea of law;
 - Reduce the underlying risk factors of inconsistencies between the legal idea, legal rules and legal practice by the means of risk communication, including the system of information about each law offenders;
 - strengthen disaster preparedness through criminals' physic and electronic communications control.
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