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From May to Bereza: A Legal Nihilism in the Political and Legal Practice of the Sanation Camp 1926–1935

Od maja do Berezy. Nihilizm prawny w praktyce ustrojowej i prawnej sanacji 1926–1935

SUMMARY

The article is an attempt to outline the manifestations of the legal and political system's nihilism, the occurrence of which the author to some extent attributes to the policy of the Piłsudski political camp after 1926. The subject of the study is to determine the attitude of the leading activists of the Sanation camp to the political system practice and legal practice, seen for the purposes of this thesis as a certain set of actions *contra legem* and *praeter legem* in relation to the legal system in force. The author also analyzes the implications of J. Piłsudski's lack of a concrete, in formal and legal terms, political program on the attitude of the Sanation political camp in relation to the application of law and on the legal security. The legal system turned out to be a factor significantly hindering the realization of the post-May camp's plans as well as the effectiveness of the political system's initiatives undertaken by the Piłsudski political camp. The main reason for the post-May camp's frequent recourse to activities that are to some extent attributed to the legal or political system's nihilism was the lack of deeper political intentions of the victor of the May Coup d'État.

Keywords: legal nihilism; Piłsudski; the Sanation; May Coup d'État; legal security

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INTRODUCTION

In the article, the author refers to several issues concerning the consideration on the legal and political system's nihilism of the Sanation between 1926 and 1935[1]. The time period indicated in the title is determined by two events characteristic of the period of the Piłsudski's ruling in the Republic of Poland. On the one hand, the May 1926 Coup d'État, which had tragic consequences[2], and on the other hand, the adoption of the so-called April Constitution under special legal circumstances[3]. The aim of the paper is not, however, to refer to the well-known and widely discussed in the doctrine such clear examples of legal nihilism in the political system's practice of the post-May camp, such as the indicated events of May 1926, the 1930 Brest elections or the adoption of the 1935 Constitution, written, as we know, for J. Piłsudski as the head of state. The subject of the study is the attempt to determine the attitude of the leading activists of the Sanation camp to the political system's practice and legal practice, seen for the purposes of this thesis as a certain set of actions *contra legem* and *praeter legem* in relation to the legal system in force. The paper is a contribution to further research into the phenomenon of legal nihilism in the interwar period. In order to ensure the complementarity of the argument, several issues were referred to.

LEGAL NIHILISM – FUNDAMENTAL ISSUES

The concept of legal nihilism is an issue addressed so far in the doctrine of, i.a., A. Bosiacki and Z. Cywiński. A. Bosiacki, referring basically to totalitarian systems, especially communism, indicates that the following can be found in the catalog of characteristic features of legal nihilism: free shaping of the system of norms by the rulers; basing the structures of power on violence and terror; striving the authorities to free themselves from restrictive regulations; allowing the competences of the central decision-making center not to result from the constitution; vague indication

[1] The paper is an extended version of the author's speech at the XVIII National Congress of Political and Legal Doctrine Historians entitled "The value of law. From legal absolutism to legal nihilism" (Lublin, September 17–19, 2019).

[2] I mean, among other things, both the balance sheet of victims of street fighting in Warsaw and the consequences of the May Coup d'État for the cohesion of the Armed Forces. As it is known, the May Coup d'État broke the principle of the army's apolitical service and tightened the polarization of political views among senior officers. This was determined by their attitude towards Piłsudski, both as the person and as their former superior, who stood against the Council of Ministers.

[3] Constitutional Act of 23 April 1935 (Journal of Laws 1935, no. 30, item 227). The political context of the Constitution of 1935 is more broadly presented in: A. Ajnenkiel, [in:] *Polskie konstytucje*, Warszawa 1991, p. 272 ff.

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of the competences of public administration bodies; broad formulation of general clauses; administrative repressions; contempt for the provisions of the current law; radical break with the current legal order; hindering the publication of normative acts; and finally, the rulers' failure to specify their attitude to the law before taking power[4]. In the discussed period, unlike in totalitarian regimes, there was no State terror, but the Piłsudski political camp was striving to free themselves from the law. In the above-mentioned approach, the activities classified as legal nihilism are to serve both the political, systemic and tactical function.

Referring to the views of A. Kojder, Z. Cywiński indicated legal nihilism as distinguishing features, *inter alia*, "the instability of the law, hypertrophy of regulations, faith in the omnipotence of the means of official law in shaping social life, instrumental use of the law, and finally, the escalation of repression"[5]. In Z. Cywiński's view, the law "deprived of autonomy and contaminated with nihilism" is influenced by "the legal values manifested by its creators and executors"[6]. In the context of the above-mentioned quotation, it should be emphasized that legal nihilism may also be a result of the lack of a concrete form of the concept of the governance model. This form, implemented on an *ad hoc* basis next to, or rather instead of, the procedures provided for in the letter of the Constitution, may eventually adopt a formula known from the post-May governments, in which formal decisions were made by the Council of Ministers, while the actual ones were made by extra-legal bodies, such as the so-called tenants or a group of colonels.

Based on these findings, it must be concluded that the leading activists of the Piłsudski political camp moved in a specific, political and ideological vacuum resulting from Marshal Piłsudski's lack of a coherent political program. Of course, the essence of the pragmatically presented issue of authoritarian governments is precisely the lack of a concrete political agenda. At that time, there was no program arranged or accepted by the Marshal, or even a plan that would demonstrate the winner's intentions after the May Coup d'État. It is worth recalling here the words of A. Friszke, who pointed out that the ideological and programming issues were of no interest of Piłsudski[7].

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[4] Cf. A. Bosiacki, *Między nihilizmem prawnym a socjalistycznym normatywizmem. Z rozważań nad koncepcją prawa państwa stalinowskiego*, [in:] *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin*, vol. 2, Białystok–Katowice 2010, p. 117 ff.; idem, *Utopia, władza, prawo. Doktryna i koncepcje prawne bolszewickiej Rosji 1917–1921*, Warszawa 2012, p. 145 ff.

[5] Z. Cywiński, *Uwagi o nihilizmie prawnym*, „Studia Iuridica" 1997, vol. 34, p. 22.

[6] *Ibidem*.

[7] Cf. A. Friszke, *Wypowiedź w ramach Panelu historyczno-politologicznego*, [in:] *Polska Partia Socjalistyczna. Szkice, polemiki, wspomnienia. Dlaczego się nie udało?*, ed. R. Spałek, Warszawa 2010, p. 394. Piłsudski's allies of that time in the struggle for power – a grouping of the broadly understood Left, with particular emphasis on the Polish Socialist Party, before they became the Marshal's political adversaries, had seen the need for a Coup d'État. This issue is discussed in the doctrine by: S. Micha-

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On the one hand, this situation forced the Commander's associates to base their work on Piłsudski's scanty and rather chaotic press enunciations, while on the other hand, paradoxically, it left some room for creative attempts to work out new political system's assumptions after May 1926. However, this way of working on draft legislation, hoping that the project would be appreciated by the Marshal, did not work in practice. An example is the fate of the project to establish the Legion of Merit by W. Sławek, rejected by Piłsudski[8]. It is impossible not to mention the Marshal's dissatisfaction with the way the April Constitution was adopted[9]. Perhaps it was a violation of imponderables valuable to the Marshal – *vide* the morality. The legal system in Piłsudski's activity, despite some declarations and speeches – which will be shown – did not play a more important role. It is evidenced e*xpressis verbis* by the study by the politician dedicated to Piłsudski, the secretary of the parliamentary club BBWR, A. Piasecki, from 1931, in which he attempted to compile the Marshal's statements on political system's issues. In spite of the upper-legged title *The Constitutional Theses of Marshal Piłsudski*, the document directly proves that the Commander did not formulate "a rationalistic concept justifying one or another form of political system"[10]. A. Bosiacki, referring to the guidelines contained in *The Constitutional Theses*, points out that "they are one of the few sets of guidelines of this rank"[11]. He also points out that:

> The starting point of Piłsudski's thoughts on the shape of the State was to be realism typical for representatives of authoritarianism. Piasecki pointed out that Piłsudski was not characterized by the fact that the State was derived from social contract, civil society or eternal peace. For Piłsudski, the State was to be the State of "social balance", without the predominance of the Left or Right or political parties' fights. Strengthening the State and its authority was for Piłsudski a force of State power[12].

łowski, *Myśl polityczna Polskiej Partii Socjalistycznej (1918–1939)*, Lublin 1994, p. 174 ff.; M. Śliwa, *Polska myśl socjalistyczna (1918–1948)*, Wrocław 1988, p. 129. See also W. Kowalski, *Stanowisko Polskiej Partii Socjalistycznej wobec zamachu majowego 1926 roku*, „Studia nad Autorytaryzmem i Totalitaryzmem" 2018, vol. 40(2), DOI: https://doi.org/10.19195/2300-7249.40.2.5, p. 103 ff.

[8] In more detail, see W. Kowalski, *Koncepcje ustrojowo-polityczne izby drugiej obozu piłsudczykowskiego po przewrocie majowym*, „Studia Iuridica" 2014, vol. 59, p. 177 ff. See also T. Chłopecki, *Koncepcje elitaryzmu w myśli Walerego Sławka*, [in:] *Prace z myśli polityczno-prawnej oraz prawa publicznego*, eds. M. Sadowski, P. Szymaniec, Wrocław 2012, p. 139 ff.

[9] Paradoxically, the activity of Piłsudski in the work on the future constitution was not based on permanence. W.T. Kulesza (*Koncepcje ideowo-polityczne obozu rządzącego w Polsce w latach 1926–1935*, Wrocław 1985, p. 52) draws attention to this fact when writing: "He [the Marshal] consistently strived to establish a catalog of important matters in which he reserved decisions and to leave the rest to his team. […] A characteristic manifestation of this selective absence of J. Piłsudski was the fact that he did not participate on constant basis in the works on changing the constitution".

[10] A. Piasecki, *Tezy konstytucyjne Marszałka Piłsudskiego. Referat wygłoszony w dniu 28 lutego 1931 r. u Marszałka Senatu Władysława Raczkiewicza*, Warszawa 1931, p. 6.

[11] A. Bosiacki, *Ewolucja myśli polityczno-państwowej Józefa Piłsudskiego oraz jej wpływ na myśl społeczną i dokonania Drugiej Rzeczypospolitej*, „Studia nad Autorytaryzmem i Totalitaryzmem" 2015, vol. 37(2), p. 22.

[12] *Ibidem*, pp. 22–23.

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If you trust the findings of W. Paruch:

> […] the views on the law and lawlessness were not a constitutive element for Józef Piłsudski's formation, i.e. individual members and organizational structures were free to program in this matter, with one basic reservation that there were no discussions on the Marshal's detailed decisions on the use of violence and the framework of certain legal solutions imposed by him. It was a condition of being a Piłsudian[13].

W. Paruch, analyzing the use of both legal and illegal methods by the Piłsudians, stated that "the attitude towards them was not an intrinsic value. Yes, in conducting the policy, there was an attempt to move within the legal frameworks, but the possibilities to use force were also accepted"[14].

THE ESSENCE OF LEGAL NIHILISM IN THE PRACTICE OF THE POLITICAL SYSTEM OF THE SANATION

The legal nihilism in the practice of the Sanation political system, perceived as a flexible interpretation of constitutional regulations, exploitation of the lack of precision of regulations, recourse to legal formalism, depreciation of the meaning of legal usurps – the denial of this *longa consuetudo*, intimidation of the lawyer self-government societies, common electoral frauds, and finally the passing of laws contrary to the letter of the Constitution of 17 March 1921, was fostered, among others, by the reluctance of the Marshal of doctrine, mentioned by J. Jędrzejewicz. Jędrzejewicz gives a clear example of it, using the example of Piłsudski's statement: "Give me a break with the doctrines. I hate that word, it is a terrible thing. All my life I have fought doctrines. It is our curse"[15].

The lack of a concept of the victors of armed actions in the streets of Warsaw, so visible after 1926, was emphasized by W.T. Kulesza when writing: "Piłsudski did not create a coherent program of change, which would be expressed in a com-

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[13] W. Paruch, *Prawo i bezprawie w myśli politycznej obozu piłsudczykowskiego w latach 1926–1939: między siłą i prawem, czyli idea „pasa neutralnego" w polityce*, „Annales UMCS. Sectio K" 1994, vol. 1, p. 250.

[14] Idem, *Między dziedzictwem a współczesnością, czyli o podstawach ideologicznych myśli politycznej obozu piłsudczykowskiego (1926–1939)*, „Annales UMCS. Sectio K" 1998, vol. 5, p. 98.

[15] J. Jędrzejewicz, *W służbie idei. Fragmenty pamiętnika i pism*, Londyn 1972, p. 196. See also J. Srokosz, *W stronę silnego państwa. Koncepcje ustrojowe prawników obozu rządzącego w Polsce 1926–1939*, Warszawa–Kraków 2013, p. 69. It is impossible not to mention that the creation of unconstitutional legal acts was facilitated by the lack of a constitutional judiciary in the Second Republic of Poland. The lack of consent to function within the framework of doctrines, which was emphasized by Piłsudski, is also mentioned by W. Jędrzejewicz (*Józef Piłsudski 1867–1935. Życiorys*, Londyn 1996, p. 212).

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prehensive draft of the Basic Law, but limited himself to fragmentary remarks about the issues he was interested in"[16].

It is not surprising, therefore, that the previously planned program plans were inevitably replaced by *ad hoc* actions and system practice. G. Ławnikowicz, referring to S. Car's statement, pointed out that "A classically shaped triad of values is contrasted with the principle – from practice to norm to principle"[17]. Aside from the completely illegal nature of the military speech of Marshal Piłsudski and his adherents in May 1926, the actions of the Sanators quickly and clearly revealed the real goals of this internally heterogeneous milieu gathered around the former Chief of State. This aim was undoubtedly to petrify and stabilize the acquired power. When the Parliament passed the Act of 2 August 1926 on the Amendment of the Constitution of 17 March 1921, the growing executive branch, which replaced the omnipotent Sejm, namely the government of K. Bartel and the tenant of the Royal Castle, I. Mościcki, who was in favor of him, showed at the head of the State's supreme authorities[18]. The unsatisfactory results of the March 1928 elections, which gave the post-May political camp only a relative parliamentary majority had an impact on the methods used by the Sanation in the later period of *de facto* power[19].

The Piłsudski's approach to the legal system is accurately reflected in the words of the President of the Criminal Chamber of the Supreme Court A. Mogilnicki, dismissed in March 1929 by an apologist and a close associate of the Marshal, Minister of Justice S. Car. Mogilnicki saw this key jurist of the Piłsudski camp as the embodiment of the realities of the post-May ruling:

> In finding appearances of law that were hiding lawlessness, Piłsudski's invaluable helper was Stanisław Car. He was one of the most harmful people of the whole Sanation regime. An extremely talented, accomplished lawyer, however, was absolutely devoid of any ethical principles[20].

Undoubtedly, it is the person of S. Car that is associated with the period of creative interpretation of legal regulations in a manner absolutely incompatible with the

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[16] W.T. Kulesza, *op. cit.*, p. 48. The program void of the Piłsudians is also accented by A. Bosiacki (*Pomiędzy państwem prawnym a autorytaryzmem. Z polskich rozważań nad poszukiwaniem optymalnego ustroju państwa po odzyskaniu niepodległości w III Rzeczypospolitej*, „Studia nad Autorytaryzmem i Totalitaryzmem" 2017, vol. 38(4), DOI: https://doi.org/10.19195/2300-7249.38.4.7, p. 100 ff.).

[17] G. Ławnikowicz, *Idea niezawisłości sędziowskiej w porządku prawnym i myśli prawniczej II Rzeczypospolitej*, Toruń 2009, p. 31.

[18] Act of 2 August 1926 Amending and Supplementing the Constitution of the Republic of Poland of 17 March 1921 (Journal of Laws 1926, no. 78, item 442).

[19] Specifically, 125 seats for the Parliament members.

[20] A. Mogilnicki, *Wspomnienia adwokata i sędziego*, Warszawa 2016, p. 303. A. Grudzińska's doctoral dissertation entitled *Koncepcje prawne Aleksandra Mogilnickiego. Prawo i prawnicy*, defended in 2014 (not published), was devoted to Mogilnicki's legal concepts. The issue of S. Car's controversial activity in the Piłsudski camp was discussed by J. Majchrowski (*Stanisław Car – polska koncepcja autorytaryzmu*, Warszawa 1996).

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rules of legal interpretation[21]. The constitutional views of the Car reveal, moreover, the conviction, so characteristic of legal nihilism, that the importance of properly established laws and the legal norms they express is, in fact, dependent on the needs of the moment, the practice of the system, which, according to the Sanators, should be transformed, eventually moving away from legal formalism. S. Car in his work *The Constitution of March 17 and the Polish Reality* contained a specific *credo* of the Sanation ruling in the political system field. He wrote there such significant words: "[…] the constitutional life of the state does not always coincide with the letter of constitutional law"[22]. Such reasoning led the Sanation lawyer to quite surprising conclusions, which were in fact an attempt to justify the May Coup d'État. According to S. Car, practically all the governments appointed after the entry into force of the Constitution of 17 March 1921 were not parliamentary governments (sic!). Criticizing the pre-May period of the Sejm-cracy, he stated directly: "Life has crossed the doctrine". The governmental circles based on this conviction applied after May 1926 the famous "constitutional tricks", as the above-mentioned A. Mogilnicki described the extra-legal activities of the Sanation, one of the most famous of which was the convening of an extraordinary session of the Sejm and Senate at the request of the parliamentarians of the Center-Left alliance of political parties. As it is known, on 24 May 1930, President Mościcki issued an order to postpone the extraordinary session of the Sejm for 30 days. At the end of June, the session was closed, the parliamentarians did not even meet for the meeting[23]. It is impossible not to quote the words of an excellent publicist, head of the Ministry of Treasury and trusted Piłsudian, Colonel I. Matuszewski: "For not the texts themselves, but only those supported by tradition, not the paragraphs themselves, but their reflection in the facts – they create the law"[24].

[21] The examples are the actions taken by S. Car in connection with the President's November 4, 1926 decree, the so-called press decree. See Regulation of the President of the Republic of Poland of 5 November 1926 on penalties for spreading untrue news and on penalties for insulting authorities and their representatives (Journal of Laws 1926, no. 110, item 640). In view of the intransigent position of the Sejm, which repealed the presidential decree on December 11, 1926, the then Minister of Justice S. Car, who was responsible for the editorial office of the Journal of Laws (*Dziennik Ustaw*), refused to publish a resolution on the non-approval of the press decree. Details of the Car's behind-the-scenes activities for maintaining the press law in force are interestingly presented by A. Mogilnicki (*Wspomnienia adwokata…*, p. 304 ff.). The issue of the evolution of press laws in the interwar period was presented by R. Habielski (*Ewolucja prawa prasowego w Drugiej Rzeczypospolitej. Zakres i recepcja*, „Studia Medioznawcze" 2013, no. 4, p. 79 ff.). It should be reminded that it was as late as in 1927 that the regulation by the head of state regulating the sphere of press law was published. See Regulation of the President of the Republic of Poland of 10 May 1927 on press law (Journal of Laws 1927, no. 45, item 398).

[22] S. Car, *Konstytucja 17 marca a polska rzeczywistość*, Warszawa 1930, p. 8.

[23] Por. „Gazeta Robotnicza. Organ Polskiej Partii Socjalistycznej Górnego Śląska i Zagłębia Dąbrowskiego" 25.05.1930, no. 120, p. 1.

[24] I. Matuszewski, *Próby syntez*, Warszawa 1937, pp. 139–140. On Matuszewski's legal concepts, see W. Kowalski, *Koncepcje prawne Ignacego Matuszewskiego w okresie II Rzeczypospolitej*, „Studia Iuridica" 2016, vol. 66, p. 135 ff.

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This conviction was shared by the leaders of the Piłsudski camp. It was in line with the views of leading activists gathered around Piłsudski. The people who came from the generation of people accustomed to the activity – *vide* members of the former Polish Socialist Party Fighting Organization (Pol. OB PPS), prioritized actions and activities within the framework of their system of values over the development of the doctrine of the post-May political camp or, among others, the program of the political party. The latter, of even fundamental importance for the realization of political assumptions, was to enable the transposition of the camp leader's general legal and political system views into the party's specific program assumptions. As A. Chojnowski points out, from the point of view of the leader of the Sanation camp, the goals for which the new political organization was to be created were dictated by pragmatism and the needs of the *ad hoc* parliamentary tactics.

> […] the goals [of the Nonpartisan Bloc for Cooperation with the Government, in Polish – BBWR] were vague. Piłsudski's approach was quite pragmatic – he wanted to have at his disposal a group of disciplined, active people, capable – as he had put it – of effective "diversion" in fighting the anti-Sanation opposition. In this sense, the BBWR was to be, first and foremost, a "voting machine" and, moreover, the instrument of propaganda influence on social moods[25].

A peculiar irony of fate is the fact that the described events took place with the permission of the *honoris causa* PhD in Law awarded by the Jagiellonian University on 29 April 1921 – J. Piłsudski. In his speech, on the occasion of being awarded with the title, he stated, referring to the period of holding the office of the Chief of State: "My first determination was to seek the law and to strengthen the sense of law in the whole nation"[26]. As it can be seen, Piłsudski has moved far away from the idea of the State of law, which he himself stressed counter-pointedly in his speech to the lower house of the Parliament, questioning whether it is still possible to "rule without a whip" in Poland[27].

So the words of A. Mogilnicki seem to be right when he wrote that "Piłsudski disregarded the law and often said it clearly, but he did not want to commit lawlessness too openly, and when committing it, he always looked for appearances of law"[28]. As it seems, this is the basis of S. Car's dynamic career.

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[25] A. Chojnowski, *BBWR – antypartyjna partia piłsudczyków*, „Biuletyn Instytutu Pamięci Narodowej" 2008, no. 5–6, p. 66.

[26] M. Rogala, *Józef Piłsudski i jego kontakty z prawem*, „Palestra" 1998, no. 11–12, p. 15.

[27] Przemówienie Marszałka Józefa Piłsudskiego do przedstawicieli stronnictw sejmowych 29 maja 1926 r., www.jpilsudski.org/przemowienia-odezwy-rozkazy/1267-przemowienie-marszalka-jozefa-pilsudskiego- do-przedstawicieli-stronnictw-sejmowych-29-maja-1926-r [access: 8.11.2020].

[28] A. Mogilnicki, *Wspomnienia adwokata…*, p. 301.

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LEGAL NIHILISM AS A MEANS OF ACHIEVING POLITICAL OBJECTIVES

The starting point for the application of a political practice based on the instrumental treatment of the law as a means aiming to enable the strengthening of the executive power while abandoning the erroneous French political patterns was the key belief that the May Coup d'État could be legalized. It is worth recalling the legalistic sarcasm of S. Car when he pointed out "the preservation of all legal forms" during the election of Marshal Piłsudski as the head of state[29]. According to the Sanation jurist "by a legal act from the Sejm, the May events have been closed". W. Makowski, another well-known Piłsudians' lawyer, spoke in a more moderate form. In June 1926, he mentioned the need "to reorganize democracy"[30].

The sources of elements of legal nihilism in the political system practice of the post-May political camp can also be found in the resignation of Marshal Piłsudski from the position of President, for which Piłsudski was elected by the National Assembly[31]. According to A. Bosiacki, the decision to resign from the State Office impacted "the intensification of activities in the political reality beyond the legal norms, in which the Marshal was not only present, but also with such reality he was apparently satisfied"[32]. Moving outside the legal frameworks was obviously convenient for Marshal Piłsudski, allowing him to use *ad hoc* political tactics, as *Diariusz* written by K. Świtalski *expressis verbis* reveals[33].

To show examples of the influence of Piłsudians' legal nihilism on both the legislation and the State political system, it is worthwhile to refer to the Regulation of the President of the Republic of Poland of 6 February 1928 – Law on the Common Court System[34]. As can be deduced from the content of this legal act, the essential aim of its adoption was indeed the necessary unification of the judiciary in the State, but it is impossible not to see that, by the way, it was decided to introduce provisions (especially the famous Article 284) that made it possible to subordinate the judiciary branch of government to Sanators and a violation of the

[29] S. Car, *Józef Piłsudski a Państwo Polskie*, Warszawa 1930, p. 36.

[30] W. Makowski, *Rozwiązanie Sejmu*, [in:] *Zmiana konstytucji. Mowy i oświadczenia Ministra Sprawiedliwości Prof. Wacława Makowskiego*, Warszawa 1926, p. 14. The then Minister of Justice, W. Makowski, spoke similarly, less than a month after the May Coup d'État, saying: "[…] the State needs the law" (idem, *Wywiad w Nowym Kurierze Polskim*, [in:] *Zmiana konstytucji*…, p. 18). See also: idem, *Wacław Makowski o państwie społecznym*, Warszawa 1998.

[31] As you know, the Marshal did not accept the election. See J. Piłsudski, *Pismo do marszałka Sejmu, zawiadamiające o nieprzyjęciu urzędu Prezydenta Rzeczypospolitej*, [in:] idem, *Pisma zbiorowe*, vol. 9, Warszawa 1938, p. 33.

[32] A. Bosiacki, *Pomiędzy państwem prawnym a autorytaryzmem*…, p. 100. See also idem, *Ewolucja myśli polityczno-państwowej Józefa Piłsudskiego*…, p. 7 ff.

[33] K. Świtalski, *Diariusz 1919–1935*, Warszawa 1992.

[34] Journal of Laws 1928, no. 12, item 93.

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constitutionally guaranteed principle of non-removal of judges, as provided for in Article 78 of the March Constitution. It should be reminded that the new regulations, although grossly unconstitutional, entered into force and made it possible, among other things, to deprive the positions of four Supreme Court presidents[35]. Z. Dworski, B. Pohorocki, W. Seyda and A. Mogilnicki were those who had been retired. It is worth noting that the effect of the regulation's entry into force was that the President, at the request of the Minister of Justice, transferred about six hundred judges (sic!)[36].

An obvious manifestation of the view of the Sanation practitioners on the issue of the stability of the legal system and judicial independence was the issue by President I. Mościcki of the Regulation of the President of the Republic of Poland of 23 August 1932 amending certain provisions of the law on the Common Court System[37]. The issue of the aforementioned act was one of the last stages of subordinating the Piłsudski political camp to the justice system in Poland. A clear expression of the lack of respect for the aforementioned essential values, necessary for the existence of the State that is part of the democratic model, was to reduce the principle of judicial independence to a rhetorical formula contained in the Constitution.

The legal nihilism discussed was reflected in the adoption of a provision in the August amendment that allowed for a significant increase in the President's power of lawmaking or the right to dissolve Parliament's chambers on his own, which clearly distorted the sense of the model of relations between the legislative branch and the executive branch, adopted in March 1921. As it is known, the aforementioned political solution, which determines the preference of the legislative branch over the executive branch, was taken from the constitutional model of the Third French Republic. Paradoxically, the amendment was adopted by the votes of the Right-wing, against which Piłsudski opposed in May 1926, and not the Polish Socialist Party, which supported the May Coup d'Ét at ideally and practically.

It is also worth pointing out that a manifestation of Sanators' conduct related to political nihilism, which was hardly noticed in the doctrine, was the Piłsudski camp's search for people highly disposed to the Sanation, especially within the justice system, who were allowed to authorize strictly political decisions in court. There is no doubt that the formula of authoritarian ruling favored radicalization of attitudes. It is not a coincidence that the sentencing by such judges as J. Rykaczewski and K. Hermanowski, the activity of S. Giżycki – Chief Election Commis-

[35] The reform of the justice system was subject to substantive criticism by the President of the Supreme Court, A. Mogilnicki, who himself, under Article 284 of the Regulation of the President of the Republic of Poland of 6 February 1928 – Law on the Common Court System, was retired. See discussion of the effects of the reform in: A. Mogilnicki, *Niezawisłość sędziów w nowym ustroju sądowym*, „Gazeta Sądowa Warszawska" 1928, no. 10–14.

[36] The author submits the data following: idem, *Wspomnienia adwokata…*, p. 330.

[37] Journal of Laws 1932, no. 73, item 661.

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sioner or, counter-pointedly, the prosecutor C. Michałowski – is identified with the Sanation ruling.

An evidence of the Piłsudski camp's acceptance for the use of methods characterized by legal and political nihilism, defined at the beginning of the paper, was the Piłsudski's reference to methods indicated by researchers as being based on violence. The idealized image of sanating social and political relations in the country by the new political group was confronted with the institution of so-called unknown perpetrators. As can be assumed from numerous accounts, they came from a group of officers in active service and were responsible for cases of beatings and intimidation (*vide* the famous raid on S. Cywiński). The radicalization of attitudes was not limited to short-term activities, but was accompanied by the issuing of legal acts that were completely contrary to the principles of a democratic State. A clear example is the issuance of the famous Regulation of the President of the Republic of Poland of 17 June 1934 on persons threatening security, peace and public order[38].

As it is well known, the Regulation was the basis for setting up the retreat camp in Bereza Kartuska. As soon as it was issued, the government administration was able to request a ruling on forced retreat by referring it to the court, specifically to the investigating judge. The legal structure of this proposal was to be based only on suspicion. No evidence proceedings or court judgement was required in the preparatory proceedings. *Expressis verbis* the character of this twentieth-century *Lettre de cachet* was manifested in the text of Article 4 of the Regulation, which made as typical the possibility of multiple extensions of the retreat. "The retreat may be pronounced for three months; it may be prolonged by the behavior of the retreat for a further three months, in accordance with the procedure set out in Article 2", i.e. the retreat pronounced by a decision by the investigating judge at the request of the government authority. It should be noted that the feature illustrating the functioning of the legal system in an authoritarian State was, therefore, that the legislator based on general clauses in the sphere of regulations reserved for criminal law. Such actions caused atrophy of the authority of both the law itself and, paradoxically, the Sanation camp in the sight of the public opinion of the time[39].

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[38] Journal of Laws 1934, no. 50, item 473.

[39] Awareness, among some of the leading Sanation activists, of such risk is now known. This is illustrated, among others, by the statement of K. Świtalski at the meeting on July 2, 1934, with the presence of L. Kozłowski, J. Beck, W. Sławek and A. Prystor. According to the author of *Diary* (Pol. *Diariusz*), he expressed with reserve his opinion on the advisability to create a retreat camp in Bereza Kartuska. According to Świtalski, the prisoners' stay in the camp could lead to radicalization. According to this testimony, the leaders of the group present at the meeting generally shared the view expressed by Świtalski (*op. cit.*, p. 663). It is also worth recalling A. Chojnowski's findings regarding the unrest within the parliamentary club of the Non-Partisan Bloc for Cooperation with the Government (Pol. BBWR) in the face of the so-called Brest case and the disclosure to the public of the degrading treatment of the leaders of the opposition groups imprisoned in Brest. Cf. A. Chojnowski, *Piłsudczycy u władzy. Dzieje Bezpartyjnego Bloku Współpracy z Rządem*, Wrocław 1986, p. 174 ff.

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There is also no doubt that basing the construction of penal laws on general clauses violated the principle of the definition of penal laws, thus undermining the legal security of the State. Such an action created an interesting paradox – on the one hand, under the slogan of protecting security, peace and public order, a system was created that enabled *de facto* deportation of an individual to a place where his or her fundamental rights were to be supposedly violated. On the other hand, such actions resulted in a noticeable decrease in citizens' confidence in the State and the stability of principles of the political system.

A characteristic feature of the process of taking over power by the Piłsudians in the 1920s, as well as the gradual increase in the role of the Piłsudski camp's environment on the political scene at the time, was the desire to cause rifts in the opposition parties by the secret adherents of Piłsudski. The best known example of such action is that of J. Moraczewski, who, without the consent of the Central Executive Committee of the Polish Socialist Party, in October 1926 took over the position of Minister of Public Works in Piłsudski's government[40]. It is also worth recalling the creation of a rival grouping to the Polish Socialist Party, i.e. the PPS – the former Revolutionary Faction.

CONCLUSION

To conclude, it should be noted that the legal nihilism in the activity of the Sanators did not seem to be entirely intentional, as it was not accompanied by an ideological, or resulting from a political program, which, as it was finally pointed out, despite some attempts, was not formulated, the conviction of the irrelevance of the law as such. Also, S. Car's considerations about the importance of the legal norm in G. Jellinek's concept were of an isolated nature and were probably intended to preserve certain appearances of legalism and respect for recognized legal concepts. For the pragmatist and the man of the deed, as undoubtedly Marshal Piłsudski was, what mattered most was the effectiveness of actions and the efficiency of a certain political system's tactic. Its content, *de iure* and *de facto*, was filled in by the political camp's practitioners – S. Car and a group of the Marshal's closest associates,

[40] This can be exemplified by the fact that Piłsudians were causing rifts on the Left, which, paradoxically – in view of the socialist card in Piłsudski's biography – was the Marshal's natural political background. As we know, Piłsudski did not identify with the parliamentary Left-wing circles after regaining independence by the State. The attempts to gain the Left's support was only temporary and instrumental in nature. The emanation of such conduct was Piłsudski's extremely quick rejection of any political concessions to the Polish Socialist Party by the winner of the May Coup d'État, at the end of July 1926. See W. Kowalski, *Między demokratyzmem a autorytaryzmem – kształtowanie się programu politycznego PPS przed i po maju 1926 roku*, „Studia nad Autorytaryzmem i Totalitaryzmem" 2019, vol. 41(3), DOI: https://doi.org/10.19195/2300-7249.41.3.8, p. 143.

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led by W. Sławek and K. Świtalski. The legal system turned out to be a factor that significantly hindered both the realization of the post-May political camp's plans and the effectiveness of actions taken by the Piłsudians. The truthfulness of this view is evidenced by the fact that nine years have passed between the May Coup d'État by the Marshal's supporters and the entry into force of the new constitution in April 1935. The adoption of the April Constitution in 1935 was an obvious time caesura for this phenomenon. It was the final result of a process initiated in May 1926, in which the ideology and political program was replaced by pragmatics and *ad hoc* actions, and a specific victim of such modernization of the constitutional order was both the quality and stability of law.

It seems that the main reason for the political camp's frequent recourse to the activities attributed to legal and political nihilism was the lack of concrete intentions of the victor of the May Coup d'État. As it has been repeatedly pointed out in the literature, Piłsudski did not develop a coherent doctrine of the ruling camp. Such attempts, unsuccessfully, were made by his closest associates. Both the lack of a political program and the heterogeneous structure of the Marshal's political background meant that political goals, both tactical, e.g. elections, and strategic, e.g. the adoption of a new constitution, were often achieved in an *ad hoc* manner[41].

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[41] From today's perspective one can wonder what the process of adopting the April Constitution would have looked like if the opposition hadn't decided to leave the Sejm auditorium indiscriminately.

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STRESZCZENIE

Artykuł stanowi próbę zarysowania przejawów nihilizmu prawnego i ustrojowego, których występowanie autor w pewnym zakresie przypisuje polityce obozu piłsudczykowskiego po 1926 r. Przedmiotem opracowania jest określenie stosunku czołowych działaczy obozu sanacyjnego do praktyki ustrojowej i prawnej, rozumianej na potrzeby niniejszego wywodu jako pewien zbiór działań zarówno *contra legem*, jak i *praeter legem* wobec obowiązującego systemu prawnego. Autor analizuje również implikacje braku skonkretyzowanego w sensie formalno-prawnym programu politycznego J. Piłsudskiego na stosunek obozu sanacyjnego do stosowania prawa oraz na bezpieczeństwo prawne. System prawny okazał się być czynnikiem w znacznym stopniu krępującym realizację zamierzeń obozu pomajowego oraz efektywność podejmowanych przez piłsudczyków inicjatyw ustrojowych. Zasadniczym powodem tak częstego sięgania przez obóz pomajowy do działań, którym w pewnej mierze przypisuje się charakter nihilizmu prawnego czy ustrojowego, był brak głębszych zamierzeń ustrojowych zwycięzcy zamachu majowego.

Słowa kluczowe: nihilizm prawny; Piłsudski; sanacja; zamach majowy; bezpieczeństwo prawne