

**THE STAGES OF CONSTITUTIONAL NIHILISM DEVELOPMENT IN RUSSIA****Tatiana V. Rekhacheva***Dostoevsky Omsk State University, Omsk, Russia***Article info**

Received –

2020 May 26

Accepted –

2020 August 20

Available online –

2020 October 01

**Keywords**

Constitutional nihilism, legal nihilism, constitution, the concept of constitutional nihilism, history of constitutional nihilism, form of nihilism, subject of constitutional nihilism

The subject. The paper concentrates on problem of development constitutional nihilism in Russia.

The purpose of the article is confirmation or confutation of the hypothesis that we can distinguish four legal periods in the development of constitutional nihilism in Russia, taking into account its criteria.

The methodology of study includes historical analysis of legal literature and formal legal analysis of normative legal acts.

The main results and scope of their application. The concept of constitutional nihilism is debatable. There is no single definition of constitutional nihilism. The paper analysis main definitions Russian and foreign scientists and offer new integrating definition. The criteria of constitutional nihilism are very similar to criteria of legal nihilism but there are several exceptions. The following grounds for classifying constitutional nihilism are most informative: level of prevalence; the nature of the external manifestation; the nature of denial; orientation of the nihilistic attitude, subjects of negation. At various stages of Russia's development, the main social groups among which constitutional nihilism was widespread were senior civil servants, high rank military officials and even presidents and even Emperor's family. The object of constitutional nihilism is the denial and non-fulfillment of constitutional norms, non-participation in the implementation of constitutional relations. Constitutional nihilism in Russia is closely intertwined with constitutional upheaval, conspiracy, and rebellion. Constitutional nihilism is dangerous not only because it changes the structure of the state, but also because of the surge of legal nihilism among the population of the country. The sources of constitutional nihilism are periods of upheaval and other negative events that push the highest echelons of power to deliberately violate the laws.

Conclusions. There are four main period of constitutional nihilism in Russia. The table compiled by the author contains six historical periods and four legal periods. Each of them is based on criteria of constitutional nihilism. The next period of constitutional nihilism can be calculated, because most often it occurs after large-scale social upheavals, but with the arrival of a strong and influential leader of the country, constitutional nihilism disappears for a while.

## 1. Introduction

In recent years, there has been a significant increase in the activity of research in the field of constitutional law. On January 15, 2020, in a message to the Federal Assembly, President of the Russian Federation Vladimir Putin drew attention to the need to change the Constitution of the Russian Federation. The working group spent the next few weeks preparing amendments, and on March 14, 2020, the Law of the Russian Federation on amendments to the Constitution of the Russian Federation "on improving the regulation of certain issues of the organization and functioning of public power" was signed.

In this situation, it is relevant to conduct research on the development of constitutional nihilism in the Russian Federation.

Constitutional nihilism is considered one of the most dangerous manifestations of legal nihilism [1]. Despite the fact that the Constitution in Russia appeared only in 1918, it is impossible to speak about the complete absence of constitutional nihilism in the history of our country before 1918. Individual elements can be seen already in the XVIII – XIX centuries.

The Constitution reflects not only legislation, but also political will.

## 2. Definition of constitutional nihilism

Constitutional nihilism is a complex subject for research, so there are few works devoted to this topic, and the existing works prefer to operate with the concepts of "constitutional nihilism" or "constitutional-legal nihilism" as well-known and understandable.

To create the definition, the work of Russian and foreign researchers was carefully studied. Due to the low level of knowledge of

the concept of constitutional nihilism, there is still no single definition that includes all the key features. So some interpret constitutional nihilism as "an integral part of the subjective worldview of legal reality" [3], others as "various forms and manifestations, the most common property is the denial of the Constitution or its adaptation to the needs of a tyrant or a despotic minority or majority" [4, p. 156], and others as "a psychological state in which a person is subconsciously controlled by reactive forces when he falls into a passive state" [5, p.58]. There are also surprising formulations such as "a philosophical approach to law often creates constitutional nihilism" [6] or an overly free adaptation of one of F. Nietzsche's statements - "the Constitution is dead, and we killed it" [7]. Some speak of constitutional nihilism as a phenomenon that appeared as a result of the merger of the party and state apparatus, and the uselessness of the Constitution at that time [8]. In another work, constitutional and legal nihilism is defined through the lack of guarantees of citizens' rights and freedoms and open violation of their rights [9], and it is possible to define it through the feature "demonstrated by the leading institutions of Federal state power" [10].

Based on the above definitions of constitutional nihilism, we can conclude that depending on the goals of the study, the definition of constitutional nihilism will change.

In this article, the working definition will be as follows. Constitutional nihilism is a complex socially dangerous phenomenon that changes the psychological state of a person to the fundamental norms of legislation; characterized by a sharply negative attitude to constitutional norms and relations. The proposed definition reflects the main features of constitutional nihilism and the variety of forms of its manifestation.

## 3. Criteria of constitutional nihilism

Constitutional nihilism, which has emerged from legal nihilism, shares with it a number of General criteria, namely:

- increased public danger;
- variety of forms of manifestation;
- global distribution;
- distortion of legal consciousness.

Constitutional nihilism carries an increased danger, since it denies the foundations of the state system, human rights and freedoms. There are many possibilities and forms of constitutional nihilism. Despite the fact that constitutional nihilism is not as widespread as legal nihilism, we can talk about its global spread, since it is derived from right-wing nihilism, which in one form or another exists in almost every country. The last criterion-the deformation of legal consciousness-is not entirely in the field of law, it also applies to psychology. The distortion of legal consciousness can occur in various ways, but in the end it will result in a distortion of ideas and norms of law. In the case of constitutional nihilism, this takes the form of total rejection and denial of constitutional norms and relations.

From my point of view, the most complete classification will be the classification of legal nihilism according to the form of its manifestation. The form of manifestation of constitutional nihilism is understood as "a set of means and methods of negative subjective response to the practice of implementing legal institutions" [11].

The following grounds for classification were selected:

- level of prevalence;
- the nature of the external manifestation;
- the nature of denial;
- orientation of the nihilistic attitude,
- subjects of negation.

The level of prevalence refers to the territory where constitutional nihilism is

actively spreading. it can be the territory of the entire country, a separate entity, or a municipality.

The nature of external manifestation is expressed in two categories: latency and legality. Under shadow or latent nihilism is understood nihilism, which is hidden, and under open or legal nihilism, which is actively manifested [12, p. 51].

The nature of negation is expressed in two categories: active constitutional nihilism and passive constitutional nihilism. Active constitutional nihilism is characterized by a struggle for their constitutional rights and an attempt to forcibly change the current Constitution, while passive nihilism is an emotionally altered indifferent attitude [13, p. 39].

The orientation of the nihilistic attitude implies two large categories: retrospective and innovative [14, p. 23]. Innovative constitutional nihilism involves denial and a pronounced distrust of constitutional norms and relations in the present and future, and retrospective – attitude to constitutional norms and relations in the past.

The object of constitutional nihilism is the denial and non-fulfillment of constitutional norms, non-participation in the implementation of constitutional relations.

In the theory of legal nihilism, it is customary to distinguish a number of subjects of nihilism, most often you can find the following classification-individual, group and mass [13, p. 44]. However, this division is not suitable for the constitutional one, since in order to deny the constitutional relations and the Constitution itself as the source of the Supreme norms of law, it is necessary to know and understand these norms. Negation is defined as "a philosophical category that expresses a certain type of relationship between two successive stages, the state of a developing object" [15, p. 471]. Therefore, negation is characteristic of nihilism, but in relation to constitutional nihilism, it must be

applied carefully. Constitutional nihilism is most likely to affect state and municipal employees, who are often confronted with constitutional relations and constitutional norms. In this regard, the classification of Safonov V. T. is worthy of attention, where subjects are divided depending on the spheres of state activity [16, p.16]. The main subjects are the President of the Russian Federation, heads of subjects of the Russian Federation, representatives of the legislative power of the Russian Federation and subjects of the Russian Federation, representatives of the Executive power of the Russian Federation and its subjects, judges. In her work, lawyer M.S. Kabanenko [17] explores legal relativism and legal subjectivism as forms of constitutional nihilism. The main features of right-wing relativism can be called undermining the prestige of the Constitution, deliberate violation of constitutional norms and non-compliance with constitutional regulations. The subjects of constitutional nihilism are mainly subject to legal relativism.

#### **4. Periodization of constitutional nihilism in Russia**

Constitutional nihilism in Russia can be classified according to the above-mentioned criteria, or it can be classified according to historical periods. In this work, will be used the legal criteria: prevalence, nature of symptoms, character of negation, nihilistic thrust of relations and subjects of denial.

The article analyzes the legal acts of constitutional significance of the last three centuries, starting with the Conditions of Anna Ioannovna in 1730 and ending with the period of the 1990s.

The reasons for the constitutional nihilism of 1730 were the following factors: the absence of a legitimate heir, in connection with the order of succession changed by Peter I, the Supreme privy Council, consisting of

nobles, gained strength during the reign of Catherine I, and the strengthening of the role of the guard in state Affairs. The conditions were intended to limit the absolute power of the Russian monarch, most of the items contained prohibitive provisions. The Supreme privy Council secretly rebelled against the established system and state order, and actively encouraged other nobles to join it, but constitutional nihilism did not spread beyond St. Petersburg.

After 80 years, constitutional nihilism gets a new impetus for development. After returning From the foreign campaigns of 1812 and 1813, the soldiers and officers brought not only peace, but also the seeds of constitutional nihilism. At the same time, secret societies began to be actively created, their programs and views were very different from each other, but a common position was maintained on the issues of overthrowing the autocracy and solving the problem of serfdom. The Union of prosperity, which began the history of the Decembrists, was created in 1818 and officially dissolved in 1821. On its basis, the southern society, led by P. I. Pestel, and the Northern society, headed by N. M. Muravyov, emerged. The draft constitutions differed from each other, the "Russian truth" of P. and Pestel had a Republican character, and the "constitutional project" of N. M. Muravyov introduced a constitutional monarchy, but both projects severely restricted the rights of the autocrat. From a legal point of view, the stage is characterized by increased dissemination of constitutional nihilism with one subject for a few (Saint Petersburg and Kiev), the nature of negation changed from secret to open, and the subject structure has been expanded through military ranks, nihilistic focus remains innovative.

A new round of constitutional nihilism in 1914-1917 occurred due to the unfinished war, major defeats at the front, famine, suspension of the work of the State Duma of the Russian Empire by Nicholas II, and even armed actions of soldiers. The climax was the act of abdication,

where the Emperor abdicates in favor of his brother, and thus violates the Decree of succession, since he could not legally abdicate in favor of his brother, since he had a son. The decree of succession of the year had the status of a constitutional document, and was included in the Code of laws of the Russian Empire, that is, it was valid at the time of abdication in 1917 and had the status of the highest legal force. Legal characteristics of the stage: change in territorial distribution, now on the territory of the entire Russian Empire and increased the subject composition at the expense of civil servants, who at the beginning of the twentieth century were determined by the Table of ranks and named military, state and court classes.

A significant turn in the characteristics of constitutional nihilism occurred in the period 1918-1924, the nihilistic orientation of the movement was changed, changing the vector to a retrospective one, the subject of constitutional nihilism once again increased, now it is almost the entire people, the nature of the external manifestation remained open. The main acts that allow us to draw this conclusion are the decree on the dissolution of the Constituent Assembly and the first Constitution of the Russian Federation.

The constituent Assembly, as the successor to the Provisional government and the second all-Russian Congress of Soviets on October 25, 1917, was the provisional constitutional body that determined the future fate of the country. The convocation of the Constituent Assembly was the direct responsibility of the Provisional government, as Mikhail Romanov pointed out in his abdication. The events of January 6, 1918 clearly demonstrated a complete disregard for the fundamental decrees and laws, when the Constituent Assembly rejected V. I. Lenin's draft "Declaration of the rights of the working and exploited people" and the provisional

constitutional body was dispersed. Power finally passed into the hands of the revolutionaries, who desperately tried to legalize their power.

The first article of the Constitution shows how this Constitution did not take into account the rights of other segments of society. A number of other articles, for example, article 3 says "the main problem of the destruction of all exploitation of man by man, complete elimination of division of society into classes, merciless suppression of exploitation...", in article 5 there are such words "...insists on a complete break with the barbarous policy of bourgeois civilization, to build the well-being of exploitation in a few chosen Nations on the enslavement of hundreds of millions of the working population in Asia, in colonies generally and in small countries". An overly politicized Constitution could not relieve the existing tension in society, and therefore served as another cause of desperate clashes during the Civil war. The main feature of war communism was the denial of the state and all its features [18, p. 18].

In 1937, constitutional nihilism once again significantly changes its characteristics, the subject narrows down to party workers, the nature of external manifestation changes to hidden, and the orientation of the nihilistic attitude again becomes innovative.

In the X and XI chapters of the Second Constitution of the USSR in 1936 for the first time there were articles granting extremely large rights of citizens, but not all articles worked, and the infamous year 1937 proved this. Articles 127 and 128 of the 1936 Constitution can be used as examples.

"Article 127. Citizens of the USSR are guaranteed inviolability of the person. No one may be arrested except by a court order or with the approval of the Prosecutor."

As we all know from the history of the country, this article was violated most often when people were illegally arrested on the basis of decisions of certain officials who are not

related to the court or the Prosecutor's office. Under the circumstances, party officials either did not know what was written in the Constitution, or deliberately violated it. It is customary to link the violation of the Constitution with the repressions Of N. I. Yezhov and the work of the NKVD Troika. Operational orders introduced Troika, which could be sentenced to execution or to prison terms. The order itself stated that "a Republican regional or regional Prosecutor may be present at meetings of the Troika (where he is not a member of the Troika)." This provision completely contradicts 127 of the Constitution, where the Prosecutor's sanction is mandatory for arrest, and by order it is assumed that the Troika, an extra-judicial body, can not only arrest people, but also pass sentences on them.

The last significant changes in constitutional nihilism occurred in 1990-1994, when for the first time in its existence the character of negation became passive, while the character of the external remains hidden.

A striking event of the last period is the August putsch of August 18-21, 1991. The established State Committee for emergency situations (GKCHP) – a self-proclaimed authority, opposed the policy of the current President of the USSR and wanted to replace the USSR with a Union of Sovereign States, a Confederation of countries. In his address to the nation the emergency Committee said that based on article 127.3 of the USSR Constitution of 1977, but paragraph 15 become 127.3 tells us the following "in the interests of ensuring the security of citizens of the USSR warns of state of emergency in certain areas and, if necessary, introduces him at the request or with the consent of the Presidium of the Supreme Council or the Supreme body of state power of the corresponding Union Republic. In the absence of such consent, it imposes a state of emergency with immediate submission of

the decision to the Supreme Soviet of the USSR for approval. The resolution of the Supreme Soviet of the USSR on this issue is adopted by a majority of at least two-thirds of the total number of its members". Based on the norms of the Constitution, a state of emergency could be declared By the President of the USSR, since the article is located in the block dedicated to the President of the USSR, the Presidium of the Supreme Soviet or the highest authority of the Republic, as follows from the article. The self-proclaimed GKCHP was not one of the above-mentioned bodies, and did not have the right to impose a state of emergency.

## 5. Conclusions

Constitutional nihilism develops not only in terms of distribution, but also in terms of subjects that have changed from period to period. It is also interesting that the nature of the external manifestation changed due to historical events and the influence of certain political figures. The main danger lies in the hidden nature of denial, since the subjects do not fight for their rights in a visible way.

Fundamental changes occur at the 2nd stage, when constitutional nihilism is almost close to legal nihilism (the subject of negation) and changes its nihilistic orientation. Stage 4 is also interesting, as constitutional nihilism becomes almost invisible.

D. A. Avdeev notes that "at present we do not have a clearly defined so-called "road map", which would be based on strategic planning for the development of the constitutional system" [19, p.26], which in turn can lead to a new round of constitutional nihilism. However, S. D. Knyazev notes that the average age of Constitutions is about 17 years, and after that it needs changes [20, p. 4]. The last, 4th stage continues with us now.

The stages of constitutional nihilism development in Russia

<i>Basis of classification Period</i>	<i>Prevalence level</i>	<i>The nature of the symptoms</i>	<i>The nature of denial</i>	<i>Orientation of the nihilistic attitude</i>	<i>The subjects of denial</i>
1730 1 stage	Saint-Petersburg	Hidden	Active	Innovative	Court classes
1818–1826 1 stage	Saint-Petersburg, Kiev	Overt	Active	Innovative	Court and military classes
1915–1917 1 stage	Russian Empire	Overt	Active	Innovative	Court, state and military classes, the Emperor
1918–1924 2 stage	RSFSR, USSR	Overt	Active	Retrospective	People of the RSFSR, USSR
1937 3 stage	USSR	Hidden	Active	Innovative	Communist Party officials
1990–1994 4 stage	Russian Federation	Hidden	Passive	Retrospective	Government employees

2020 is a year of significant changes in the basic law of our country, so perhaps constitutional nihilism will change its characteristics again. There are all the prerequisites for this. The key points of constitutional nihilism analyzed in the article clearly demonstrate that constitutional nihilism in Russia is closely intertwined with constitutional upheaval, conspiracy, and rebellion. The history of Russia over the past three centuries has always linked these concepts, without a surge of discontent among the highest echelons of power, constitutional nihilism is not revived. Constitutional nihilism is dangerous not only because it changes the structure of the state, but also because of the surge of legal nihilism among the population of the country.

The study found that the sources of constitutional nihilism are periods of upheaval and other negative events that push the highest echelons of power to deliberately violate the laws. The next period of constitutional nihilism can be calculated, because most often it occurs after large-scale

social upheavals, but with the arrival of a strong and influential leader of the country, constitutional nihilism disappears for a while.

## REFERENCES

1. Batchis W. Constitutional nihilism: political science and the deconstruction of the judiciary. *Rutgers Journal of Law & Public Policy*, 2008, vol.6, no. 1, pp. 1- 34.
2. Vetrenko I.A. The beginning of a large-scale political reform in Russia: a new turn in 2020. *Pravoprименение = Law Enforcement Review*, 2020, vol. 4, no. 1, pp. 14–20. DOI: 10.24147/2542-1514.2020.4(1).14-20. (In Russ.).
3. Sanotskaya D.S. *Constitutional legal mechanism for overcoming legal nihilism in the Russian Federation*. Available at: <http://conf.omua.ru/content/konstitucionno-pravovoy-mehanizm-preodoleniya-pravovogo-nigilizma-v-rossiyskoy-federacii> (accessed on 12.05.2020) (In Russ.).
4. Frankowski S., Stefan P. B. *Legal Reform in Post-Communist Europe: The View from Within*. Hague, Martinus Nijhoff Publ., 1995. 483 p.
5. Lesňák, S. Modernism and nihilism of the Constitution for the Earth. *Ethics & Bioethics (in Central Europe)*, 2019, vol. 9, iss. 1-2, pp.57-63. DOI: <https://doi.org/10.2478/ebce-2019-0005>.
6. O'Brien D.M. *Judges on Judging: Views from the Bench*. USA, CQ Press, 2016. 392 p.
7. Contiades X. *Constitutions in Global Finance Crisis. A comparative analysis*. London, New-York: Routledge, 2016. 316 p.
8. Bell J.D. *Bulgaria In Transition: Politics, Economics, Society, And Culture After Communism*. Colorado, Westview Press, 1998. 360 p.
9. Nudnenko L. A. Constitutional rights and individual freedoms in the context of the interaction of civil society and the rule of law *Gosudarstvo i pravo = State and law*, 2010, № 12, p. 93-102 (In Russ.).
10. Brinchuk M.M. *Hard times of environmental law*. Available at: <http://www.igpran.ru/public/public-site/Brinchuk.2010.pdf> (accessed on 16.05.2020) (In Russ.).
11. Fedorenko K. G. *Legal nihilism*. Doct. Diss. Thesis. Nizhny Novgorod, 2001. 28 p. (In Russ.).
12. Fedorenko K. G. *Legal nihilism*. Doct. Diss. Thesis. Nizhny Novgorod, 2001. 173 p. (In Russ.).
13. Totorkulova M.M. *Nihilism in the culture of modern Russian society*. Cand. Diss. Thesis. Stavropol, 2002. 159 p. (In Russ.).
14. Tsagov I.A. *Sociocultural attitudes of nihilism in the life strategies of Russians*. Cand. Diss. Thesis. Maykop, 2017. 160 p. (In Russ.).
15. *Philosophical Encyclopedic Dictionary*. Moscow, Soviet Encyclopedia, 1983, 840 p. (In Russ.).
16. Safonov V. G. *Legal nihilism of the civil servant and ways to overcome it*. Cand. Diss. Thesis. Moscow, 2004. 181 p. (In Russ.).
17. Kabanenko M.S. The deformation of constitutional justice. *Vestnik Omskogo universiteta. Seriya «Pravo» = Herald of Omsk University. Series "Law"*, 2013, no. 1, p. 14 - 19. (In Russ.).
18. Baburin S.N. The Revolutionary Consolidation of the Society: The Renaissance of the State Religion, the Citizenship of the RSFSR, 1918. *Vestnik Omskogo universiteta. Seriya "Pravo" = Herald of Omsk University. Series "Law"*, 2019, vol. 16, no. 1, pp. 16-28. DOI: 10.25513/1990-5173. 2019.16(1).16-28. (In Russ.).
19. Avdeev D.A. Constitutionalization of legal policy in modern Russia. *Pravoprименение = Law Enforcement Review*, 2018, vol. 2, no. 4, pp. 25–29. DOI: 10.24147/2542-1514.2018.2(4).25-29. (In Russ.).
20. Knyazev S.D. Stability of the Constitution and significance thereof for the modern Russian federalism. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and Municipal Law*, 2015, no. 1, pp. 4–12. (In Russ.).

## INFORMATION ABOUT AUTHOR

**Tatiana V. Rekhacheva** – PhD Student, Department of State and Municipal Law  
*Dostoevsky Omsk State University*  
55a, Mira pr., Omsk, 644077, Russia  
email: mileendomsk@rambler.ru

## BIBLIOGRAPHIC DESCRIPTION



Rekhacheva T.V. The stages of constitutional nihilism development in Russia. *Pravoprименение = Law Enforcement Review*, 2020, vol. 4, no. 3, pp. 16–24. DOI: 10.24147/2542-1514.2020.4(3).16-24. (In Russ.).