



RUSSIA POLICY ALERT

International non-recognition of elections: The case of the Presidential elections in the Russian Federation in 2024

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Executive Summary

The Presidential elections in the Russian Federation in March 2024 are being conducted among ongoing military aggression against neighbouring Ukraine and unprecedented internal repression against political opposition and civil society. Massive human rights violations, such as crackdowns on independent media and restriction of freedom of assembly and freedom of association, affect all aspects of the election campaign.

In violation of international law, the Russian authorities are preparing to conduct elections in the Ukrainian territories occupied since 2014 as well as those occupied following the full-scale invasion in 2022. Official data indicate that up to 5m voters may be forced to participate in the elections in these territories, equivalent to about 4.8 per cent of the total number of voters.

Substantial grounds for putting the legitimacy of the elections under question are:

- A. Artificial and illegal extension of suffrage to Ukrainian citizens residing on the temporarily annexed territories, which damages the connection between the citizenry and the authority of the government established by international law.
- B. Illegal extension of the term limits for the incumbent through the unconstitutional referendum in 2020.
- C. Severe limitation of political pluralism that deprives voters of an opportunity to make a choice among distinct alternatives.
- D. Severe limitations of fundamental rights and freedoms that prevent the voters from forming a political opinion to form their will in the elections.
- E. Procedural Shortcomings.
- F. The exclusion of international election observation through the OSCE and the suppression of independent domestic election observers additionally increase concerns over the legitimacy and credibility of the electoral process.

For non-recognition to be meaningful, it should be followed by concrete steps, such as the introduction of sanctions on those officials being responsible for the systematic organisation of massive election fraud, downscaling of diplomatic relations, and as the ultimate consequence non-recognition of the incumbent.

The failure to challenge these elections on the other hand could set a bad precedent in Europe. It could be used by the regime's propaganda both as a legitimisation of the illegal occupation of Ukrainian territories and of the violation of international legally binding standards for democratic elections.

A. “Russia has no borders”: Challenge of international standards for elections by holding them in illegally annexed territories

The key issue here is the understanding of who “the people” who will serve as the basis of the mandate of the president are. By including people who are not recognised as citizens of Russia (by the virtue of non-recognition of the results of the referenda in 2022) and who can even use passports issued by another state to identify themselves, the Russian authorities invalidate the notion of ‘the people’ as understood in the international law.

Indeed, Article 21.1 of the UDHR speaks of “the right to take part in the government of his country, directly or through freely chosen representatives” and Article 21.3 holds that “the will of the people shall be the basis of the authority of government”. This premises the notion of ‘the people’ in the context of participation through elections in the concept of ‘his country’ implying citizenship. The ICCPR is even more direct when it expressly attributes exclusively to the citizens the rights provided for in Article 25, including the right “to take part in the conduct of public affairs, directly or through freely chosen representatives” (Article 25.a) and the right “to vote and to be elected” (Article 25.b). In the context of Russian elections, the ICCPR is of lesser relevance as it simply does not apply to those illegitimately declared Russian citizens, but the link established by the UDHR between the people being citizens and the effects of the elections is paramount for the legitimacy of the process. It can be argued that the outcomes of the elections as a whole can be seen as lacking legitimacy under international law if the pool of ‘the people’ includes non-citizens.

B. Questionable eligibility of the incumbent

The availability of choice is related not only to who can contest the elections but also to who cannot. Extending the choice available to voters in ways that violate the law damages the overall legality of the process. In the case of Russia, an argument has been made that Mr. Putin cannot stand for further terms in office due to the invalidity of the 2020 referendum that removed his term limits. It is important to see if the referendum itself was not recognised by the international community.

The 2020 constitutional referendum in Russia was sharply criticized by the international community and citizen observers alike. The example of the resolution H. Res 806 in the 117th US Congress is informative – the legal argument for the non-recognition of President Putin remaining in power beyond the 2024 election is based on the assessment that “the 2020 amendments to the Constitution of the Russian Federation were enacted in violation of the laws and international commitments of the Russian Federation.” The resolution did not proceed beyond being referred to the Foreign Affairs committee.¹ PACE resolution 2519 (13 October 2023) draws the

¹ <https://www.congress.gov/bill/117th-congress/house-resolution/806/actions?s=1&r=302>

conclusion of the ineligibility of President Putin from how the removal of term limits violated “not only the Russian Constitution but also well-established international legal principles.”² These useful examples should be assessed politically as to their sufficiency for casting the incumbent as ineligible to contest, and therefore to win, the elections.

The Russian authorities, and other autocrats, often rely in their argumentation on the prevailing force of the popular will. They argue that the popular will supersedes the law or has the power to change it. The fallacy of this argument is in its disregard of such a cornerstone principle of the rule of law as stability of the law.

C. Lack of political pluralism and availability of genuine choice

The context in which the elections are taking place is characterised by the inability of political opposition to operate inside Russia. The pro-democracy activists face prosecution and are forced into exile. The most important policy choice – the opposition to the war of aggression against Ukraine – is punishable under criminal law. In the absence of a genuine political debate on this most important issue, the elections are deprived of their fundamental component of choice between alternatives. Other issues, such as pervasive corruption, gender identity, and sexual orientation, are also shut out of the public debate. The refusal of President Putin to take part in the debates is symbolic of the lack of willingness to engage in a debate.

Political pluralism and choice in the upcoming election are considerably restricted. The conviction of Aleksei Navalny to a year-long prison term and his presumable murder in prison in February 2024 left the country without the most popular opposition leader. The refusal to allow Ms Duntsova to collect supporting signatures, and the refusal to register Mr Nadezhdin as a candidate, clearly demonstrate the intention to deprive voters of a real alternative to the incumbent.

D. Restrictive human rights environment: An inability to form ‘the will of the people’

No matter how important the availability of choice is, the ability to form an opinion for or against the distinct options is also crucial. Here, due consideration should be given to the environment in which the elections are taking place. The importance of other fundamental rights for the full realisation of the right to vote embodied in Art.21 of UDHR and Art.25 of ICCPR are repeatedly underscored by authoritative interpretations of UN human rights and treaties, as well as by treaty bodies and academics. Among these key other rights are the right to freedom of expression, assembly and association, the freedom of movement, and, some claim, the right to education.

² Para.3.5 of PACE Resolution 2519.

In the Russian context, there is sufficient evidence of massive and systematic restrictions of the mentioned freedoms in recent years and, indeed, decades. It is beyond the scope of this paper to present those in detail, but it is worth mentioning the laws restricting critical discussion of specific topics, such as the war against Ukraine or LGBT rights, the labelling of CSOs and individuals as foreign agents or undesirable organisations with all the negative consequences and personal risks this entails, restrictions on assemblies introduced in 2020 through legal amendments, and the long-standing concerns with the registration of political parties.

In this environment, forming an informed opinion of the political options is challenging. With the media serving a function of propaganda and not an informational one, such opportunities are further restricted. The inability to conduct public rallies or publicly express dissenting opinions restricts the ability of citizens to even become aware of the existence of alternative viewpoints.

E. Procedural Shortcomings: do the elections reflect the will of the people?

In the case of Russia, numerous reports of international and citizen observers over the last decades point towards egregious levels of election day fraud at the stages of voting, counting, and tabulation alike. The recently introduced multiple-day voting process significantly increased risks and reported cases of election-day fraud. Measures such as video surveillance of the polling and tabulation premises have been reduced in the scale of application, thereby decreasing possibilities for deterrence of fraud or its detection.

Additional avenues for fraud are created by the remote electronic (internet) voting that is increasing in the scale of application from one election to another. For the September 2023 elections, the CEC of Russia dramatically extended internet voting, including to those regions that never practiced it before or, even more significantly, had previously reported results less supportive of the authorities. In the 2024 elections, internet voting will be used in 29 regions with a total of 47 million voters. The pattern of extending this modality to the more opposition-minded regions is repeated.

F. Purposeful limitation of transparency

In the situations of democratic deficit and election fraud, transparency is often the only remaining election standard to protect. Autocrats may want to limit election observation exactly for the reason of avoiding accountability. As in the case of Belarus in 2020-2024, as well as Russia in 2021-2024, international observers may be absent, and citizen observers may be the only ones on the ground.

The absence of international observers is often caused by authoritarian regimes presenting such conditions on observation that are impossible to meet without sacrificing credibility (e.g. Russia 2021, Azerbaijan 2013, Russia 2007). We have also seen recent cases where the invitation was extended so late that it was impossible to deploy a mission, for example, Belarus in 2020.

The latest tactic is to outright refuse to invite observers (Russia 2024, Belarus 2024). This refusal is an outright violation of the OSCE commitments, specifically paragraph 8 of the 1990 OSCE Copenhagen Document. Authoritarian governments try to blame international observers for the failure to deliver on their mandate, but their absence in Russia in 2024 is wholly due to the positions taken by the host government. In the face of such blatant violations of the obligations, the non-recognition of the election outcomes should not be ruled out.

Outcome or Process: what standards?

Non-recognition of the election outcome must be premised on finding the electoral process severely lacking in some specific ways. Treating the legitimacy of the outcome separately from that of the process would open the non-recognition to accusations of partiality. In other words, it is impossible to question the outcome without showing how the process is short of shared standards.

In the case of Russia, the standards that can be referred to are both global and regional. The former are embodied in Article 21 of the UDHR and Article 25 of the ICCPR. For the latter, the OSCE commitments and standards outlined in the CIS convention on elections are of central importance. Applicability of the Council of Europe standards, including the Venice Commission Code of Good Practice, is legally questionable since the expulsion of Russia from the organization, but politically relevant as the CoE member states may still refer to them as their shared yardstick for decision-making.

It is worth recalling what the UDHR and ICCPR contain and morally and legally binding standards for elections.

UDHR, Article 21(3) says:

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

ICCPR, Article 25b:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

... To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”

In this enumeration of standards, one key element stands out. Some deviations from standards of periodicity, universality, equality, secrecy, and even freedom, may be justified on the basis of reasonable and objective grounds. However, it is hard to imagine an election that is acceptably genuine. The difficulty is that the term ‘genuine elections’ has not been formally defined in legal terms. Authoritative interpretations of the treaty text, as well as recourse to the *travaux préparatoires* of the UDHR and ICCPR, allow us to argue that the term ‘genuine elections’ can be understood in three distinct and complementary ways: lack of political choice, violations of human rights, severe procedural shortcomings.

The analysis of the elections in Russia demonstrates a falling short of all these parameters. They do not satisfy the criteria of ‘genuine elections’, lack transparency, and are conducted on the basis of a violation of international law.

International non-recognition of elections – background, precedents, implications

The calls to not recognise the outcomes of certain elections are not uncommon. References are typically made to substantial shortcomings of the elections, as compared to the internationally recognised standards. It is clear, however, that in the absence of global or regional bodies that grant ultimate formal recognition to national elections, the issue is ultimately political.

The decisions of non-recognition are typically made by individual states or their communities (such as the EU) through formal parliamentary resolutions. Non-recognition can also be signalled more informally through declarations of high-level officials.

The decisions of non-recognition normally amount to refusing to accept the outcomes of an election as a basis for maintaining or developing relations with the alleged mandate holder. Such decisions take the form of parliamentary declarations, statements of high-level officials, or government spokespersons. In the case of the 2020 elections in Belarus, such declarations were made by several government spokespersons or officials themselves, typically formally based on fraud reported by

citizen observers but also with reference to the post-election crackdown on the dissenters.³ Declarations of non-recognition or “lack of democratic legitimacy” were also made through formal resolutions.⁴ Other examples include the US not recognising the outcomes of the 2019 elections in Bolivia, the 2013 elections in Zimbabwe, and the 2009 elections in Iran. On the EU side, such examples are much rarer, possibly due to the need to seek consensus among members who may have diverse relations with the regimes concerned.

In all cases, however, the decisions rely on the assessment that irregularities were of a massive or systematic or large-scale character. The decisions rarely go into details of what standards have been breached and, significantly, how to lead to a conclusion of non-recognition. The practice shows, however, that the reasons for the non-recognition should be made transparent. They must be understandable and traceable in electoral standards as well as in international agreements and obligations.

The non-recognition often leads to the downscaling or cessation of already existing relations. These decisions can take the shape of:

- A. Personal sanctions against those officials responsible for election falsification
- B. Refusal to renew or extend credentials of diplomatic representatives
- C. Non-extension of invitations to senior officials to international events
- D. Freezing of programs of cooperation
- E. Downsizing or cancellation of international or bilateral aid.

In effect, the non-recognition is rather void of its meaning if none of the above effects follow.

As all these steps are politically and/or economically costly, those opting for non-recognition must explain them in terms understandable to their citizens. This necessitates referring to the well-recognised principles that go beyond national laws or customs and speak to deeply held values.

³ <https://www.axios.com/2020/09/23/us-lukashenko-president-belarus>.

⁴ See p.9 of [US Congress Resolution H.R. 8438](#). See Para.2 of the [EU Council Conclusions 11661/20](#).



About the author:

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