



Credentials for the Russian Delegation to PACE after flawed Duma elections 2021?

SUMMARY

Independent election experts have described the 2021 Duma elections as the dirtiest elections in Russia's history. The lack of public control, the deprivation of ca. 9 Mio Russian citizens of the right to stand for election and the massive manipulation through application of uncontrolled e-voting have turned the Duma elections into a farce. The holding of elections on the annexed territory of Crimea and the inclusion of ca. 500.000 votes from inhabitants of the occupied Eastern Ukraine puts the legitimacy of the current State Duma and the new PACE delegation additionally under question. This breach of Protocol 1 § 3 is another substantial shortcoming of the Russian government with regard to the European Convention on Human Rights and should be sanctioned by PACE and the Committee of Ministers during the upcoming Winter Session of PACE accordingly. What are the options?

A) With the 2019 change of the Rules of Procedure PACE has deprived itself of the option to withdraw the right to speak and to vote from some of its members. Still there are [some smaller sanctions](#) left that PACE can still apply:

- the right to be appointed rapporteur
- the right to be a member of an ad hoc committee on observation of elections
- the right to represent the Assembly in Council of Europe bodies as well as external institutions and organisations, both institutionally and on occasional basis. The application of these left-over sanctions would be an absolute minimum option that the PACE should consider during its Winter session 2022.

B) The use of the "[Complementary Procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its statutory obligations](#)" which is a time-consuming procedure with high procedural requirements

C) The expulsion of Russia from the Council of Europe must stay an option if Russia will continue to deprive its citizen the right to vote and to be elected, will continue to exert military aggression against other CoE member states or will use its membership to sabotage the CoE's work and manages to weaken the binding character of the ECHR in other countries

With this special briefing the European Platform for Democratic Elections wants to shed a light on the past Duma elections. André Härtel, PhD, Researcher at the Stiftung Wissenschaft und Politik, Berlin will assess the Russian membership in the Council of Europe as a challenge for the credibility and functionality of the institution and Prof. Dr. Caroline von Gall will look deeper into the question whether Russia's membership in the Council of Europe can still guarantee legal action for Russian Citizen at the European Court on Human Rights.

Why Russia's PACE delegates cannot be considered legally elected parliamentarians

Independent election experts have described the 2021 Duma elections as the dirtiest in Russia's history.

Main intrigues were:

- Lack of transparency in elections
- Restriction of the right to vote
- Manipulation through e-voting

The elections took place with the international public excluded and massive restrictions on domestic election observation

1. The deployment of an international long-term observation mission of the ODIHR-OSCE was prevented under the pretext of pandemic control. As a result, PACE, PA OSCE and the European Parliament have not sent observer missions either.
2. Civil society election observation and media were put under additional pressure in the run-up to the elections by extending "foreign agent" laws to unregistered organisations, media and individuals between November 2020 and March 2021. The unregistered election observer movement Golos was declared a "foreign agent" a month before the election to prevent its observation activities. At the same time, election observation was promoted by regime sponsored Civic Chambers with no methodical preparation.
3. Due to the restrictive laws, several independent media outlets were shut down in the run-up to the election, while the state media ran smear campaigns against prominent opposition politicians and the Golos Movement.
4. The election commissions remained under government control. They were given additional powers to remove unwanted journalists from polling stations.
5. The Central Election Commission actively tried to limit the transparency of the election. Firstly, access to live coverage from polling stations, which has helped expose massive voting and vote counting fraud in past elections, has been restricted for independent election experts. Secondly, the publication of official election results on the websites of the Central Election Commission was blocked in order to prevent statistical analysis - a powerful tool developed by Russian experts to reveal massive election manipulations.

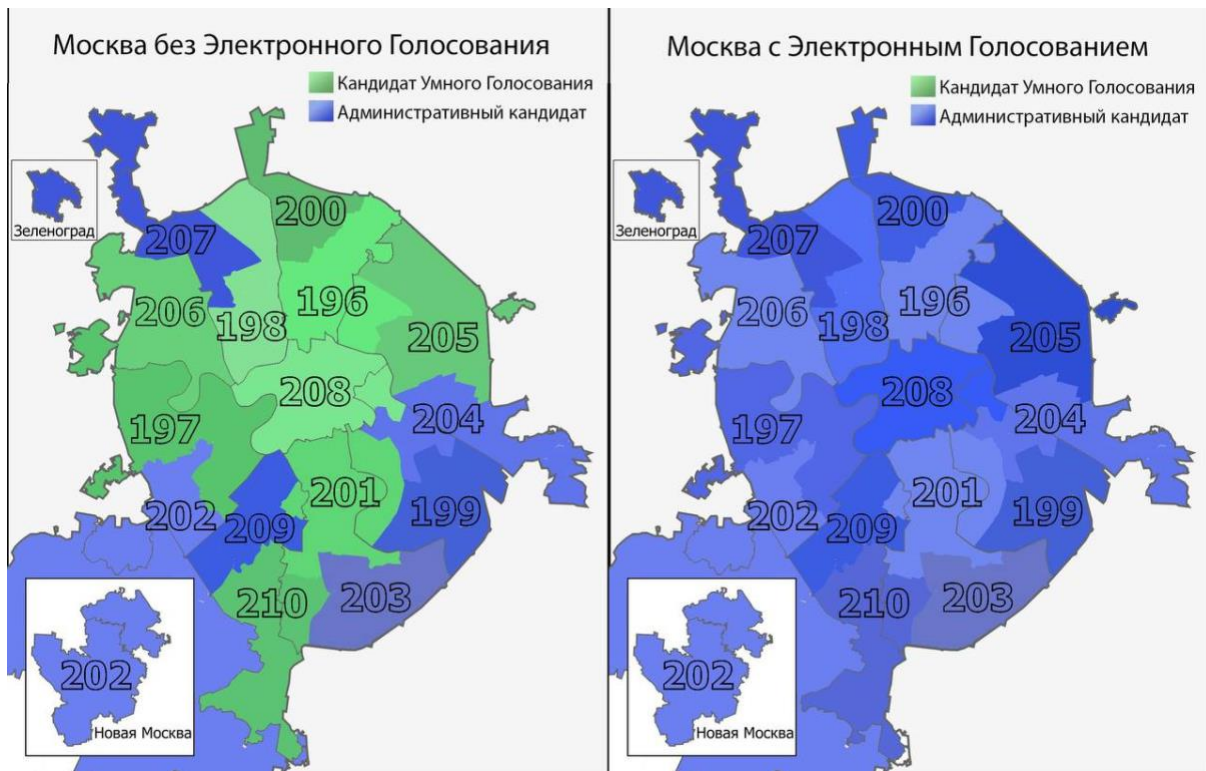
Restrictions on the right to stand for election

Since the last State Duma elections in 2016, there have been 19 changes to electoral law, six of them just before the September 2021 elections. The most important changes were aimed at restricting the right to stand for election. Firstly, Russian citizens can now be deprived of the right to stand for election even for minor offences and misdemeanours - including participation in protests. Secondly, with the so-called "extremism law" passed 3.5 months before the elections and the classification of Alexei Navalny's organisations as extremist only 5 days after adoption of the new law, all candidates of pro-Navalny organisations were prevented from standing for election. The law is also illegal because it is retroactive. This means that anyone who has already been involved in activities of Nawalny's organisations in any way from summer 2020 onwards will not be able to stand for election until at least summer 2024 (for activists) and 2026 (for leaders). This means they will not be able to run in the upcoming presidential elections 2024 and perhaps even parliamentary elections in 2026. Anyone convicted of continued activity in Nawalny's now-banned organisations faces up to six years in prison.

According to experts' estimates, a total of about 9 million Russian voters have lost the right to stand for election as a result of the recent law amendments (about 8 % of the total number of voters). This number is expected to increase significantly in the future.

Massive falsification through e-voting

In seven regions - including Moscow e-voting was carried out for the first time. In Moscow, 2 million voters (almost a third of the electoral roll) registered for internet voting. In Moscow, the results of e-voting were only announced the next day following the election, after a meeting between Ella Pamfilova (Head of the Central Election Commission) and Vladimir Putin. The e-voting turned the results of the ballot box election upside down: With an official turnout of 96.5%, nine constituency winners of the ballot box election lost their seats to pro-Kremlin candidates after the e-voting results were included into the final vote count.



On 23 September, the Russian president's press secretary, Dmitry Peskov, said that the practice of e-voting should be spread as widely as possible.

Conclusion:

Looking at the data available, analysed and compiled by independent election experts, it is clear that the deputies of the Duma elected in 2021, and thus also the PACE delegation, are not legitimised by free elections. The holding of elections on the illegally annexed Crimea and the access to elections for inhabitants of the occupied territories in Eastern Ukraine (ca 500.000 voters) is another factor that puts the legitimacy of the State Duma under question. This means a violation of Protocol 1 § 3 of the European Convention on Human Rights and should be sanctioned by PACE in the upcoming winter session accordingly.

PECULIARITIES OF THE RUSSIAN DELEGATION TO THE PACE

Three members of the Russian delegation asking for credentials at the PACE Winter Session are on EU Sanction lists:

- Leonid Slutsky
- Svetlana Zhurova
- Leonid Kalashnikov



Leonid Slutsky

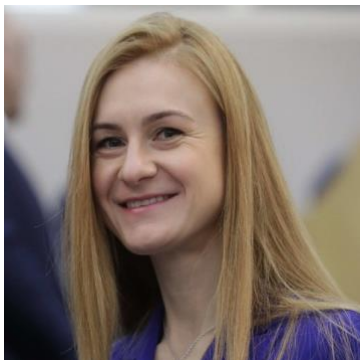
- Sanctioned for "actively supporting the use of Russian forces in Ukraine and the annexation of Crimea" by EU, Norway, Iceland, the US, Canada, Australia and others
- Organised "fake election monitoring" via the Russian Peace Foundation - including of the 2018 presidential election with nearly 500 international "observers"
- Organised trip by P. Agramunt to Syria in 2017 (PACE).
- Initiates networks on far-right European parties and movements



Aleksey Chepa

Fair Russia

- Co-organised "fake election observation" of the 2018 parliamentary elections in Cambodia
- Co-organised "fake election observation" of the presidential elections in Russia 2018



Maria Butina

United Russia, Kirov Region

- Russian citizen, studied in USA

- Arms lobbyist, built networks with Trump supporters in US
- Sentenced in 2018 by US court to 6 months imprisonment for attempting to influence the 2016 US election



Evgeniy Popov
United Russia

- Elected by manipulation of the internet vote in Moscow, constituency 197



Sergey Altukhov
United Russia

- 2021 Elected by massive fraud, according to statistical analysis approx. 28% or 160,000 irregular votes in the election district



Olga Kazakova
United Russia

- Elected through massive electoral fraud, approx. 21 % or 108,000 irregular votes in the election district

Russian Membership in the Council of Europe – Challenge for the credibility and functionality of the institution

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Council of Europe Department for Policy Planning 2012-2015*

1) Russia's admission to the Council of Europe (CoE) in 1996 can today only be understood in the context of the 1990s or the immediate phase after the end of the Cold War. Russia joined the organisation without complying with its statutes. The hope and belief of the other members and the leadership of the Council of Europe was to be able to socialise Russia better within the organisation than outside. In addition, access of Russian citizens to the European Court on Human Rights (ECtHR) was already highly valued at that time. However, internal organisational factors also played a role, such as the political upgrading of the Council of Europe through Russia's accession and its expected contribution to the Council of Europe's budget.

2) Until the annexation of Crimea, Russia was a difficult member of the CoE, implementing the European Convention on Human Rights and other agreements only selectively (a la carte), but also contributing constructively to the work of the organisation through professional individuals. However, a simmering issue of conflict in the background was always the "double standards" perceived by Russia and other new members within the CoE. For example, Russian representatives always criticised the focus of the organisation's work on democratic and human rights deficits in the new, especially post-Soviet, member states, while problems within the old membership were hardly addressed.

3) The annexation of Crimea by Russia in 2014 was a turning point in the country's relationship with the CoE, but one that was primarily initiated by Moscow. The withdrawal of the Russian delegation's voting rights by the Assembly was a symbolically significant but ultimately ineffective sanction. The Committee of Ministers, the decisive structure in the CoE, can be accused of inactivity. This allowed the Russian leadership to make a kind of open declaration of war on the CoE in 2017, which led to success in 2019 via the changes to the Rules of Procedure on the withdrawal of voting rights (!) and the basically unconditional return of the Russian delegation.

4) The main argument for Russia to remain in the CoE has always been the access of Russian citizens to the European Court on Human Rights (ECtHR). However, this is from an empirically point of view, flawed. Since Russia acceded to the European Convention on Human Rights in 1998, it has implemented only 40% of the approximately 2,600 judgments handed down against it, and in most cases only pays the corresponding compensation (again, only selectively). In the last 10 years, the implementation rate for significant sentences has been as low as 10%. In 2021, the most cases were pending against Russia, with over 13,000. Moreover, since a Russian law was passed in 2015 and due to the Russian constitutional amendments of 2020, it is very questionable to what extent ECtHR judgments will be recognised by the Russian government at all.

Recommendations to Members of the Parliamentary Assembly of the Council of Europe:

- The option of Russia's expulsion from the Council of Europe needs to be on the table for the case in which the Russian government systematically uses its membership to sabotage the CoE's work and manages to weaken the binding character of the ECHR in other countries
- Otherwise Russian membership has its value as the CoE is the only multilateral organization with agreed upon procedures to criticize Russia's human rights and democracy conduct and force the Russian government to justify their policies

Members of new delegation should focus on the following:

- 1) Do focus on core human rights and democracy issues in daily work and do not engage in marginal topics such as institutional reform etc.

- 2) Form working alliances with like-minded PACE members and ambassadors to the Committee of Ministers to increase pressure on the Russian government in order to ensure access of rapporteurs to the country and to increase the implementation of leading ECtHR judgements
- 3) Work closer with German Foreign Ministry and representatives to the Committee of Ministers to synchronize PACE work with the work of the Committee of Ministers and to ensure Committee of Ministers follow up
- 4) Take CoE work and what happens there out of the shadow of European politics by communicating more with civil society and major media

Can Russia's membership in the Council of Europe still guarantee legal action for Russian Citizen at the European Court on Human Rights?

Prof. Dr. Caroline von Gall is an Associate Professor (Juniorprofessor) at the Institute for Eastern European Law at the University of Cologne

Art. 8 of the PACE Rules of Procedure provides that credentials may be challenged in the event of serious violations of the primacy of law and the obligation to "co-operate sincerely and actively in the common pursuit of human rights, democracy and the rule of law". This corresponds with the membership requirements in general.

In fact, Russia did not even fulfil the requirements at the moment of accession. Instead, exceptions were defined from the beginning to justify membership. Central to this was that membership

- would provide an important forum for dialogue with Russia and,
- Russian citizens would be able to bring cases before the ECtHR. The possibility of legal action became an important argument especially after Russian human rights defenders warned in 2018/19 that in case Russia should leave the Council of Europe also the possibility of legal action for Russian citizens before the European Court of Human Rights (ECtHR) would be lost.

This exception to the principle is a problem overall, because it is precisely the European Convention on Human Rights that is built on voluntary membership, the principle of subsidiarity. The Council of Europe has hardly any enforcement instruments of its own. Structurally, the Council of Europe cannot work against individual member states. At the same time, rights are granted: all member states can elect judges to the ECtHR and influence policy. A member state that does not fulfil the basic requirements as laid down in the European Convention on Human Rights always reveals the weakness of the Council of Europe.

Exceptions can therefore only be justified if, despite the lack of membership requirements, membership serves the aims of the Council of Europe as a whole.

There are no indications of this today in the case of Russia. Russia more than clearly refuses to engage in a dialogue on the implementation of the Council of Europe's goals. While Russia recognised the values of the Council of Europe, the primacy of international treaties over Russian law and the importance of human rights, at least on paper, in its 1993 constitution, the Russian government has now expressly abandoned them. Even the access to the European Court on Human Rights for Russian citizen cannot in itself serve the aims of the Council of Europe if the Russian government refuses to implement its judgements. It does create individual satisfaction and objective reappraisal. However, the Russian example in particular shows that the possibilities of appealing to the ECtHR are limited. Individual complaints can only be used to deal with individual cases. In view of the profound structural violations of the European Convention on Human Rights through the Russian government, however, almost every citizen could theoretically claim a violation of rights. And if citizens had the

know-how and the resources to file a complaint, the ECtHR would be massively overburdened. As of 30.11.2021, 16,300 cases from Russia were pending before the ECtHR.

It is therefore extremely problematic that the in the case of Russia judgements are only pronounced years later, often after individuals have been imprisoned for a long time. The long duration of proceedings in the case of Memorial and the NGOs affected by the Russian law on Foreign Agents has proven to be particularly precarious. Memorial had already filed a first complaint against the Foreign Agent Law in 2013. But the verdict is still pending. Since then, almost the entire organized NGO landscape has disappeared.

But if the verdicts are then only pronounced after more than 9 years, they are not only a symbol of late justice. The finding of a breach of the law after years of repression and extensive destruction of Russian NGOs without any prospect of being able to enforce the verdict then also becomes a demonstration of power by the Kremlin. Vladimir Putin can show with every unimplemented verdict that international law cannot protect against profound human rights violations. And that is why he also wants to show the powerlessness of the West. These judgements contribute to this demonstration of power, also in the Navalny case.

In this respect, mistakes have been made in the past: Precisely because Russian membership to the Council of Europe was ultimately justified primarily by the possibility of legal action, the complaints should have been used more in their leverage function. Faster procedures and political pressure on the Russian government to enforce the rulings would have been necessary. Here, the Parliamentary Assembly and the Committee of Ministers could have been used more. In the Navalny case, infringement proceedings under Article 46 of the European Convention on Human Rights would have been conceivable; in principle, states can also file state complaints.

In 2019, Memorial had already warned against the argument of the possibility of legal action and described it as a trap. If criticism of the Russian human rights situation had been spared in recent years precisely in order to prevent Russia's withdrawal from the Council of Europe, because the citizens should retain the possibility of legal action, then in any case not much would have been gained for human rights in the Memorial case.

Against this background, the possibility of legal action can only be an argument if the decisions are made promptly and if there is some reasonable hope that the judgments will also be implemented, which is not the case.

Ultimately, one must be careful not to recognise the annexation of Crimea with the confirmation of credentials to the Russian Delegation.

Berlin, 21.01.2022