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# Conditions for Citizen Election Observation in the Russian Federation Ahead of the 2021 Duma Elections



*This publication was prepared by EPDE to inform relevant stakeholders and decision makers in the European Union, the Eastern Partnership, and globally in the field of electoral legislation and administration. Please feel free to forward and share our analysis.*

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Photo: Moscow, Russia - 07.20.2019: protest during Moscow City Duma elections. „I have the right to choose!“

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## SUMMARY

Opportunities for independent citizen election observation and civil society space in general have been shrinking steadily in Russia over the past decade. In 2020, changes were introduced to laws and regulations bringing further restrictions of rights and freedoms, which had a palpable impact on the space for citizen observation. The absence of provisions for direct accreditation of citizen election observers forces them to act on behalf of contestants or media and therefore contradicts the very idea of independent election scrutiny by civil society, and is at odds with international standards. Various other restrictions introduced on the eve of the 2021 parliamentary election campaign pose further organizational, administrative, and logistical challenges. The already oppressive legislation on “foreign agents” has been further expanded, considerably impairing the ability of civil society organizations and their supporters to

engage in observation, voter education, and awareness-raising campaigns. Another law, on “undesirable foreign organizations,” aims at further isolating Russian citizen election observation from the international community. Both the “foreign agent” and “undesirable organization” laws envisage severe administrative or criminal liability for both organizations and private persons. At the same time, the Russian authorities are promoting election observation on a massive scale through so-called “civic chambers,” which were initiated and are controlled by the authorities.

This working paper aims to provide a brief update on the overall conditions for independent citizen election observation in the Russian Federation ahead of the Duma Elections anticipated to be held on 19 September 2021.<sup>1</sup>

## OVERALL FRAMEWORK FOR ELECTION OBSERVATION

The legislation provides for observation of an electoral process by representatives of electoral contestants, media, and international observers. Since 2017, observers may also be appointed by the federal and regional civic chambers (see below). Candidates and political parties

contesting elections may also appoint proxies to follow the electoral process.

However, at odds with international standards and good practice, there are no provisions for direct observation

<sup>1</sup> See the preceding EPDE [Working Paper on Legal Framework for Citizen Election Observation in the EU–Eastern Partnership and Russian Federation](#), October 2019.

by citizen observers or civil society organizations.<sup>2</sup> To be able to follow an electoral process, citizen observers are forced to either seek partnerships and get accredited on behalf of contestants or media, or resort to nominations through the state-controlled civic chambers.

The absence of a possibility for direct accreditation of citizen observers contradicts and undermines the very idea of independence and neutrality of citizen election monitoring. It may also negatively impact the work of such indirectly accredited observers since any affiliation might create expectations or perceptions of their loyalty to nominating actors rather than to the principles of honest, unbiased, and free observation.

The need to deploy observers as contestants' proxies has on several occasions led to candidates withdrawing their observers' accreditations on polling day, when the contestants came under pressure due to massive reports of irregularities reported by the observers during the election campaign.<sup>3</sup>

Based on legal provisions and the resolution of the Central Election Commission (CEC), media representatives can be accredited to follow the work of election commissions and the process throughout election day, including during counts. However, accreditation requires a work contract with a media company, which must be concluded at least two months before the official announcement of the election, and which corresponds to six months before the vote (Art. 30.4 of the Law on Basic Guarantees, Art. 32.1<sup>2</sup> of the Law on Duma Elections). This seriously complicates the planning of journalist assignments for media organizations and is an obvious interference with the independence of the media, whose job it is to freely report on the political processes.

The legislation also does not explicitly recognize and grant possibilities for long-term election observation and access to electoral institutions and processes.<sup>4</sup> The emphasis in legal provisions outlining the rights and duties of observers is placed on election day observation, including early voting.

Positively, the legislation contains several guarantees of observers' activities, including that an observer may be removed from a polling stations only based on a court decision. However, in practice observers are often removed from polling stations by the police due to alleged "misbehaviour" or "violation of public order," without any court decision. In such cases, even if observers are

able to return to polling stations, the monitoring process has already been disrupted.

Various restrictions are placed on how observation may be carried out, posing organizational, administrative, and logistical challenges.

This includes the restriction that no more than two observers may be nominated by any entity per polling station, with only one observer having the right to be present at a time (Art. 30.4 of the Law on Basic Guarantees, Art. 33.5 of the Law on Duma Elections). Following the July 2020 amendments, this requirement was clarified to mean that no more than two observers per polling station per day of voting are allowed in case of multiple days of voting, with a possibility to appoint two reserve observers.

Furthermore, the same person can be appointed as an observer only to one election commission, which effectively prevents observer organizations from engaging in mobile observation and having observers visit several polling stations on election day. An additional limitation, introduced in July 2020, made districts and constituencies within which observers can be nominated and carry out their activities, dependent on the type of election and observers' place of residence or registered temporary stay (Art. 30.4 of the Law on Basic Guarantees in conjunction with Art. 4.4-4<sup>1</sup>). This restriction further limits the mobility of observers since during regional and local elections it would only be possible to recruit observers to work within their respective regions or localities. It may also result in unequal conditions and entitlements, since, for instance, observers on behalf of parties during federal elections would be entitled to be recruited from and operate across the country, while observers of candidates running in single-mandate districts would likely be limited to that specific district. Finally, an additional administrative hurdle requires lists of observers nominated to polling stations to be submitted three days in advance to respective territorial commissions (Art. 30.7<sup>1</sup> of the Law on Basic Guarantees, Art. 33.3<sup>1</sup> of the Law on Duma Elections). These restrictions negatively affect civic motivation, which may lead to disengagement at the grass-root level from citizen monitoring activities.

Overall, current legal provisions do create opportunities for citizen election observation; however, various limitations imposed do not facilitate free and comprehensive independent observation, rendering it burdensome and restricted in practice.

2 Paragraph 8 of the 1990 OSCE Copenhagen Document provides that participating States "consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place." Paragraph 20 of the General Comment No. 25 to the ICCPR requires that "There should be independent scrutiny of the voting and counting process." Section II.3.2.a of the Code of Good Practice states that "both national and international observers should be given the widest possible opportunity to participate in an election observation exercise."

3 <https://www.golosinfo.org/articles/143699>.

4 The [Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations](#) emphasizes that "non-partisan election observation and monitoring by citizen organizations employs in its best practice long-term observation and analysis that address all parts of the election cycle as well as the broader political context that affects the character and quality of elections."

## CIVIC CHAMBERS AS “MODERATORS” OF ELECTION OBSERVATION

### What are civic chambers?

The federal [Civic Chamber](#) was introduced as an institution in 2005 with the adoption of the respective federal law. It was tasked to support the interaction between citizens and authorities, to protect citizens’ rights, freedoms, and interests in the shaping of and implementation of state policies, and to exercise public control over the activities of authorities. Based on 2013 legal provisions, the federal Civic Chamber comprises of 168 members, 40 of whom are appointed by the president, 85 by regional civic chambers, and 43 by public associations. In addition to the federal Civic Chamber, regional civic chambers are established in subjects of the Russian Federation; their members are appointed by federal or regional governments and by civil society organizations.

Over the years, the role played by civic chambers in the context of election observation has considerably gained in significance. The chambers’ entitlement to select and deploy election observers has received legal footing, and their work is endorsed and promoted through statements and collaboration with various state institutions, including the CEC.<sup>5</sup>

At the same time, observer organizations, citizen and international, have long been critical of election observation through civic chambers due to the lack of consistent and clear observation methodology, focus on election-day procedures without any long-term observation components, and, in particular, the chambers’ perceived affiliation and loyalty to state authorities.<sup>6</sup> Concerns have been growing that this form of controlled election observation could be used to filter out, mute, and over time disable observation by unaffiliated independent observers and organizations, who tend to be more critical of the electoral process.

The prominence of civic chambers was further boosted by the March 2020 [Law](#) on Amendments to the Constitution, “On improving regulation of some questions of organization and functioning of public authorities”. Art. 2.16 of the Law granted civic chambers an exclusive right to nominate observers for the July 2020 constitutional referendum, forcing all entities interested in following the proceedings to use this mechanism of “mass public oversight” as the sole entry point to observation. The federal-level Civic Chamber also received an unprecedented entitlement to nominate observers to the CEC and all lower-level commissions from the official appointment of the referendum, including to follow the preparations for the holding of the vote.

Based on the federal Civic Chamber’s [Regulation](#), nominations of observers through civic chambers are open to a broad range of actors, including political parties, public associations, labor collectives, professional unions, civil society organizations, and citizens individually. The federal Chamber has reported to have nominated through its various structures over half a million observers for the constitutional referendum.<sup>7</sup>

However, independent observers point out that decisions on whether and who to nominate to which polling stations rest entirely with civic chambers, which are reported in many cases to have declined or not responded to nominations from citizen organizations such as Golos and Sonar as well as applications from individual observers, or have nominated such observers to inconveniently far-away locations.<sup>8</sup> Several political parties have declined to nominate observers through civic chambers altogether questioning the genuineness of this mechanism of observation. The authenticity of motivations of civic chambers’ observers in ensuring the compliance of the electoral process with legal requirements is also questioned in reports of independent observers. They have frequently noted a lack of genuine engagement and action on violations on the part of civic chambers’ observers. Observer organizations, citizen and international, continue to call for the restoration of the right of civil society organizations and groups of citizens to directly nominate election observers.<sup>9</sup>

It remains to be seen at the time of writing what role civic chambers might play and whether, as feared by some commentators, they would be endowed with any additional legal authority ahead of the 2021 elections. In the meantime, the Civic Chamber has announced to have launched preparations for the mass training of observers across the country.

5 For instance, the Civic Chamber’s “[Golden Standard](#)” for observation of the September 2020 Single Voting Day was adopted with the support and endorsement of the CEC.

6 See the [OSCE/ODIHR Final Report on the 2018 presidential election](#) and the [analysis](#) by Golos in connection with the 2018 presidential election.

7 According to the Civic Chamber’s [data](#), 236,272 observers were from 18 political parties and around 300,000 observers were self-nominated and representatives of public organizations.

8 <https://openmedia.io/news/n3/plebiscit-vyxodit-iz-pod-kontrolya-obshhestvennye-palaty-ne-puskayut-nablyudatelej-iz-nezavisimyx-dvizhenij/?amp>. See also Golos’ [Preliminary Statement](#) on the results of observation of the 2020 constitutional referendum.

9 See Golos’ [Preliminary Statement](#) on the results of observation during the 13 September 2020 single voting day and [OSCE/ODIHR Final Report on the 2018 presidential election](#).

## IMPACT OF RECENT LEGISLATIVE INITIATIVES ON ELECTION OBSERVATION

The legal framework for elections underwent a number of revisions in 2020. Apart from amendments to election laws, this included amendments pertaining to public associations, protection of national security, as well as the criminal code and the code of administrative

offences. Several of these changes have a bearing on citizen election observation.

### Additional restrictive “foreign agent” provisions

#### What are “foreign agents” and “undesirable organizations”?

The First legal provisions aimed at restricting the ability of civil society organizations in Russia to use foreign funding to sustain their activities were introduced in July 2012. These provisions obliged non-commercial organizations receiving foreign funding and carrying out broadly defined “political activities” to register with the Ministry of Justice as “performing the functions of foreign agents.” The status also entails stringent reporting requirements and an obligation to identify such organizations as “foreign agents” in information materials, at a threat of serious administrative sanctions. From June 2014, organizations may be entered into the “foreign agent” register by the Ministry of Justice on its own initiative. Following the December 2019 amendments, “foreign agent” provisions also apply to foreign-funded or supported media organizations. This may also apply to private persons, regardless of citizenship, that distribute in the public domain any print, audio, audio-visual and other communications and materials. International bodies, including the [European Parliament](#), [Venice Commission of the Council of Europe](#), [OSCE/ODIHR](#), [OSCE Representative on Freedom of the Media](#), and [Amnesty International](#), have continuously criticized the progressively restrictive “foreign agent” laws as incompatible with human rights standards. Over 60 organizations challenged the application of “foreign agent” provisions to them at the European Court of Human Rights, with consideration pending. As of April 2021, the “foreign agent” [register](#) listed 75 organizations, and an additional [media register](#) listed 17 media outlets and persons.

Since 2015, in addition to “foreign agent” provisions, another restrictive law on “undesirable organizations” has been in force. It allows banning from the country any foreign or international organization that is deemed as undermining Russia’s security, defense, or constitutional order. The law also envisages administrative and criminal sanctions for Russian organizations and citizens for any cooperation with “undesirable organizations.” The law on “undesirable organizations” has been [assessed](#), among others, by the Venice Commission of the Council of Europe as unduly interfering with freedoms of association, assembly, and expression.

“Foreign agent” and “undesirable organizations” provisions continue to hamper the work of affected organizations, stigmatize and damage their reputation, and isolate the civil society, including independent election monitors, from international cooperation and support. A number of affected organizations were forced to shut down or to dramatically scale down or alter operations. EPDE was classified as an “undesirable organization” in March 2018.

On 30 December 2020, provisions of the already oppressive “foreign agent” legislation were further expanded and now, in addition to the previous list, are applicable to unincorporated public associations and private individuals that engage in excessively broadly defined “political activity” and receive foreign support. The latter not only includes funds, but also any material, organizational, or methodological support, even via an intermediary. No requirement is imposed to prove the connection between the support and the activity that is being engaged in, or limits on the amount of such support. As with predecessor provisions, an obligation is imposed for quarterly reporting and for all information and materials produced to be marked accordingly.<sup>10</sup>

In addition, the election legislation also prohibits non-commercial organizations recognized as performing

functions of a “foreign agent” to carry out activities in support of or thwarting the organization of elections, to nominate candidates, as well as to participate in electoral campaigns in any other form (Art. 3.6 of the Law on Basic Guarantees, Article 11.1 of the Duma Law).

The totality of restrictions imposed by these provisions will continue to considerably impair the ability of civil society organizations and their supporters to engage in observation or in any other activities in connection with elections, including voter education and awareness-raising campaigns. Given the breadth and vagueness of the regulations, a considerable number of organizations either do not qualify, having already been listed as “foreign agents”, or risk being recognized as such, at the threat of severe administrative or criminal liability.

<sup>10</sup> See EPDE [analysis](#) on “foreign agent” provisions.

## Multi-day voting

The July 2020 amendments to election laws introduced inter alia the possibility of voting being held over several, but no more than three, days (Art. 63<sup>1</sup> of the Law on Basic Guarantees, Art. 80<sup>1</sup> of the Law on Duma Elections). This novelty was conceived as a measure to guarantee the health and safety of voters in the conditions of the COVID-19 pandemic and to help avoid overcrowding of polling stations. During the July 2020 constitutional referendum (held before the adoption of the amendments), voting took place over a 7-day period, and during the September 2020 elections over three days in total, including early voting two days ahead of the main election day.

Such special arrangements are conceivable and have been resorted to in a number of countries that held elections during the pandemic. They may be effective in ensuring a more paced out processing of voters, thus reducing the likelihood of virus transmission.

However, as independent observers pointed out in connection with the September 2020 vote, the organization of voting over several days creates more opportunities for irregularities or fraud, including increased vulnerabilities around overnight storage, security and handover of ballots and other sensitive materials.<sup>11</sup> At the same time, multi-day voting considerably complicates observation, requiring far greater human and financial resources, coordination, and administrative and logistical efforts.<sup>12</sup>

While the decision regarding multi-day voting during the 2021 elections was pending at the time of writing, it was nevertheless widely expected to be used. Concerns regarding related vulnerabilities in the process and the need for stepped-up efforts by observers are therefore likely to feature again.

## Voting outside polling stations

Pandemic-related amendments of July 2020 also included a provision for the organization of voting outside polling stations, in locations appropriate for being equipped for this purpose. This arrangement was used during early voting days of the September 2020 elections, but not very broadly, according to citizen observers. Also, irregularities noted during the two days before the main election day appear to have been related to the known vulnerabilities of early voting as such rather than stemming from the new provisions for out-of-polling-station voting. Nevertheless, both citizen observers and political parties expressed concerns and remain critical of these new provisions as rendering systematic external oversight and observation difficult.

## Distance electronic voting

Following pilots conducted during the September 2020 voting in Kursk and Jaroslav Oblasts, the CEC has announced the intention to expand the use of distance electronic voting to six regions during the 2021 Duma elections. Piloting and gradual introduction of new voting technologies are consistent with good international practice.<sup>13</sup> However, as emphasized also by independent observer organizations, electronic voting continues to carry the dangers associated with voting outside the controlled environment of polling stations, including threats to the principles of secrecy, freedom, and integrity of the vote, as well as to public confidence.

Importantly, voting using technology renders observation challenging and requires a sufficient level of access to the technology, administering institutions, information, and technical expertise. Ahead of the September 2020 pilots, independent observers criticized the non-public process of the system's development and testing, as well as the non-publication of key technical documents and of source codes.<sup>14</sup>

The expanded use of electronic voting is likely to continue to pose challenges for election observers during the 2021 elections, both due to the intrinsic limits on observability of technological solutions and in case of the continued lack of transparency around them.

## Use of video cameras in polling stations

Since 2012, polling stations in Russia have been equipped with video cameras to record election day proceedings and to stream footage online – measures that were argued to have been aimed at increasing the transparency, integrity, and public confidence in electoral processes. The use of cameras raises a number of concerns in light of international standards and good practice, in particular the potential for breaches of secrecy and for having an intimidating effect. As pointed out by the OSCE/ODIHR, there are also “inherent limitation as to what web cameras can and cannot capture and therefore from an outset they cannot be regarded as an ultimate safeguard against any possible manipulations.”<sup>15</sup>

Apart from concerns related to the reliance on cameras as safeguards of electoral integrity, their continued use during elections also has consequences for election observation. Election authorities have been promoting web cameras as a practical technological solution that renders direct in-person observation less relevant since election proceedings in a large number of precincts across the country can be followed online or recordings can be

11 OSCE/ODIHR paper on [Alternative Voting Methods and Arrangements](#), p. 27.

12 See [Final Report](#) by Golos on the results of observation of the September 2020 vote.

13 See, for instance, [Recommendation CM/Rec\(2017\)5 on standards of e-voting](#) by the Council of Europe Committee of Ministers, p. 27.

14 See July 2020 [statement](#) by Golos. Good practice documents recommend allowing for electronic systems' independent evaluation and certification by “disclosing the system design, by allowing inspection of the detailed documentation, by disclosing the source code, by allowing inspection of component evaluation and certification reports, in-depth penetration testing”. See p. 95 of the [Explanatory Memorandum to Recommendation CM/Rec\(2017\)5](#).

15 [OSCE/ODIHR Final Report on 2012 presidential election](#), p. 8.

obtained during a three-month period after election day. Positively, records from video cameras can be used as evidence in courts.

Given the aggregate limitations on independent citizen observation, distance monitoring does constitute a valuable – and in some cases the only – observation mechanism, and observer organizations were able to develop tools and tactics to put it to good use.

However, there should be no illusions that video observation is a replacement for and genuinely supports independent election observation. Apart from the fact that web cameras are unable to capture everything that happens at a polling station, it is difficult to carry out a

large-scale, comprehensive, professional observation via an online stream, nor is gaining access to and performing analyses of recordings after election day a simple task. Considerable resources are needed for both and various procedural hurdles complicate timely and effective access. It is hardly feasible for citizen observers to receive official recordings from election authorities for further scrutiny. Furthermore, the courts, as a rule, ignore the evidence of fraud based on the official video recordings captured by citizen observers.<sup>16</sup>

It is foreseen that the practice of video observation will be maintained and, according to media reports,<sup>17</sup> possibly increased in scale for the 2021 Duma Elections.

16 See <https://www.golosinfo.org/articles/143311>, <https://www.golosinfo.org/articles/142021>.

17 <https://www.kommersant.ru/doc/4654249>.





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