

Free but Unfair

PONARS Policy Memo 292

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November 2003

Democracy, as one political scientist noted, is a political regime in which rulers lose their offices because of electoral defeat. This is not the case in Russia; elections have not become, at least not yet, a mechanism for the transfer of power. No election has resulted in presidential or government turnover, and no change of governmental policy has been a consequence of electoral accountability. This is a striking phenomenon considering the fact that competitive national elections have been occurring in Russia for the past 14 years. Although polls are held regularly, they become irrelevant if they contradict the wishes of those in power. And although parliamentary and presidential elections may be free in terms of citizens having the right to vote and choose, they remain unfair in that candidates are not afforded equal opportunities or fair access to media coverage.

Russia's Unfair Elections: Legal Norms and Practices

The very meaning of “free and fair” democratic elections has two different, though overlapping, dimensions. Elections are usually regarded as “free” if virtually all adult citizens and relevant candidates and parties are provided with the opportunity to take part in a competitive election. Russia certainly passes this threshold. But what about the “fair” conduct of elections: impartial electoral governance by state officials as well as state provision of equal opportunities for candidates and parties in electoral contests? When labeling elections as free and fair, many international observers focus on these democratic conditions in very minimalist terms. They use basic indicators such as major complaints from candidates who lost elections (or lack of such complaints, as in the case of Russia), or point out that the number of cases of electoral fraud is minimal. The latter statement is, in fact, suspicious, especially after the 1993 elections and the referendum on Russia's constitution. At that time, soon after the appearance of allegations of mass fraud, all ballots across Russia were deliberately destroyed per special request of the Central Electoral Commission. Since then, however, the situation has improved. Yet, according to some studies, several regions in Russia, including Bashkortostan, Dagestan, Tatarstan, and the Saratov oblast', have recently witnessed systematic electoral fraud in national, regional, and local elections. This issue is manageable if parties, politicians, the media, NGOs, and international observers make joint efforts to address it. Electoral fraud, although important, should not currently be considered a major threat to Russia's electoral politics. Rather, competitive elections in Russia are threatened to a greater extent by informal “rules of the game.” These include one-sided media coverage of

campaigns, non-transparent campaign finance practices, and biased decisions of commissions and courts in electoral disputes.

Why have Russia's electoral politics become so unjust and corrupt? According to the conventional wisdom, Russia lacks a strong tradition of the rule of law and thus Russia's citizens do not respect the law, including electoral law. This view, already questionable in its validity, does not explain why some norms of electoral governance are implemented and, more or less, followed and enforced, while others are not. Another popular explanation of lawlessness in Russia is linked to the dramatic decline in the ability of the state since the breakup of the Soviet Union to effectively implement and maintain major policies. This explanation is flawed, however, as evidenced by the fact that, despite serious efforts to restore power to the Russian federal government since 2000, electoral injustice has become even more visible in recent years.

Selective implementation of the rules of the game, such as rewarding loyal actors while punishing political opponents, occurs in many different sectors of the Russian government, affecting a range of government officials from tax inspectors to the traffic police. In the field of electoral governance, electoral commissions and courts as well as many other Russian bureaucratic organizations, are also vulnerable to the influence of authorities and big business. However, biased elections in Russia have been the result not only of selective implementation of electoral laws, but also of the content of the electoral laws themselves.

Russia's electoral laws were initially designed in 1993 by a group of liberal intellectuals, and Boris Yeltsin and the Federal Assembly adopted them in 1994–1995 (with subsequent amendments in 1997–1999). These laws provided major guidelines for the governance of elections and included a set of rules regarding media coverage, campaign finance, and the resolution of electoral disputes. These rules were often formulated in rather vague and unclear terms, thus creating loopholes, omissions, and ambiguity in election laws. Although errors are inevitable in the first stages of electoral reform in a country, some of these guidelines were proposed purposefully to ensure that incumbents would remain in office. Although liberals in Russia usually believe that minimal government intervention is the best policy, with regard to election reform they preferred vague rules that would afford them ample opportunity for political maneuvering and manipulation.

The fact that ambiguities in the laws helped certain candidates is evidenced by the lack of regulation of news coverage on state-owned stations, which favored candidates and parties to the right of the political spectrum and had a negative effect on coverage of their opponents from the left. Although the 1996 elections were portrayed on television as a Hollywood-like contest between the good guys and the bad guys, the 1999 parliamentary elections turned into an information war between major television channels that backed the candidates of the "parties of power." In addition, ambiguities in campaign finance regulations encouraged shady uses and flows of money in political campaigns, including the indirect and direct abuse of public finances by incumbents. The infamous case of the 1996 arrest of Boris Yeltsin's campaign aids for embezzling \$538,000 was only the tip of the iceberg. Finally, grounds for the imposition of sanctions for violations of electoral laws were also unclear. For example, according to Russian electoral law, "the

election commission shall recognize elections as null and void if violations during polling or identification of voting results prevent a truthful identification of free will of voters.” One pro-Yeltsin State Duma member suggested privately during debates over the law that, “we should have an opportunity to denounce presidential elections if Zyuganov [head of the Communist Party] or Zhirinovskii [head of the Liberal Democratic Party] wins.” Although this never occurred, it is not difficult to see why the provisions for invalidating an election were made so vague. This is evident not only in the quotation above, but also in the fact that this law actually has been used to invalidate local elections when the “wrong” candidate won.

Over-regulation, Selective Use of Rules, and the Costs of Political Monopoly

Attempts to counter inequality and corruption in elections have produced mixed results. Despite the fact that some loopholes and omissions in legal texts have been filled, efforts to end abuses of vague election laws have been insufficient and ineffective. Between 2001 and 2003, in the wake of parliamentary and presidential elections, however, the Russian State Duma amended electoral and other election-related laws. In some cases, these laws simply made it more difficult to hold fair elections. In the 1990s, the major obstacles to fair elections were lack of legal regulations and selective implementation of electoral laws. Since 2000, electoral governance in Russia has moved toward legal over-regulation and intentionally selective implementation of electoral laws by officials. This is especially true for media regulations.

According to the new electoral law, virtually any media mention of candidates and/or parties during campaign season (except for official information provided by electoral commissions) is regarded as advertising. If this coverage is not officially paid for as publicity, it is illegal. The only exception to this rule is the coverage of the professional activities of candidates, which in fact is beneficial to incumbents. The violation of these rules might result in various sanctions, including the closure of the media company in violation. The electoral commissions and courts decide which information is considered advertising. In other words, according to this law, during the campaign period, media (both state-owned and private) cannot report on any particular candidate or party, and can be punished if they fail to follow this law. Not surprisingly, the majority of Duma deputies, who are pro-Kremlin, enthusiastically voted for these amendments.

In late October, the Constitutional Court of the Russian Federation abolished the most restrictive parts of this law, but concern over the regulation of the media during the election remains. The uneven nature of media regulation, where media coverage is either overregulated or underregulated, still leaves ample room for the manipulation of election coverage by the authorities. In addition, the government has established firm control over the process of political party registration and thus has access to the parties' financial information, while parliamentary parties only receive modest financial aid from the state budget.

The major problems that currently exist in electoral contests are not only a result of the content of the new laws, but are also caused by the deliberate abuse of these laws. Electoral law clearly prohibits the use of so-called administrative resources, which refers

to the use of public offices for electoral purposes, and includes such actions as public officials endorsing a specific candidate or political party. However, it was Russia's president, Vladimir Putin, who openly ignored this rule. He not only announced his support for his protégée, Valentina Matvienko, in the gubernatorial race in St. Petersburg, but his speech in support of her and his request to the government to transfer additional funds to the city to help her were broadcast on television and were used by Matvienko as major reasons to support her campaign. This occurred despite the legal prohibition of these actions. In addition, Putin attended the congress of the major pro-Kremlin party, United Russia, and openly expressed his support for the party. United Russia leaders justified his actions by stating that he expressed his support for this party "as an ordinary voter." The fact that his speech was broadcast on television and was widely used in campaigns, however, seems to show that this was not simply the opinion of an ordinary voter. In both cases, the protests of opposition parties and politicians were ignored by the Central Election Commission and the Supreme Court.

Although he went against his own laws, in terms of the development of Russia's political party system, Putin's open endorsement of a party of his supporters is a positive sign. The problem is that the actions that the president is allowed to take are strictly prohibited to other officials and public figures that would support an opposition candidate, thus giving pro-Kremlin candidates and parties a considerable advantage. The encroachment of state officials in the election of 2003 can attest to this fact. Besides its effect on polling day, this trend of creating restrictive election laws and then selectively implementing them is undermining the ability of Russia to establish democratic governance.

Although proponents of "managed democracy" in Russia often suggest that biased and unfair elections are simply an unavoidable side effect of the long process required to rebuild the Russian state, these practices have two very problematic consequences. First, the unfair nature of elections is one of the major causes of the decline of voter turnout, especially on the regional and local levels, due to public dissatisfaction with the very institution of the popular vote. When only 20 percent to 30 percent of eligible voters cast their votes (this is a typical turnout in many gubernatorial and mayoral elections), the political accountability of elected authorities becomes questionable. Second, and probably more important, it is hard to expect that those politicians who gained office by distorting election laws will pursue major economic, social, or legal reforms toward more transparency, impartiality, and efficiency. Quite the opposite, the practice of biased elections in Russia could create more avenues for corruption while diminishing prospects for the rule of law.

Under these circumstances, Russia's authorities have little incentive to change the status quo of electoral practices. It is unlikely in the short term that a strong challenge to corrupt election practices could emerge from within the country, largely due to the negligible impact of non-Kremlin political parties, media, and NGOs on the political process. The role of international influence, including Western support of freedom for the media and civil society, has also dramatically declined in recent years, increasing the weakness and vulnerability of these institutions. This could lead to a strengthening of the current non-competitive political environment, which could produce a long-term vicious circle of meaningless elections in Russia. Contrary to the widespread belief that the

continuity of the existing electoral practices will guarantee Russian stability and predictability, distorted competition in elections will result in stagnation and backwardness. This is why every effort to prevent the emergence of a monopoly of power by one party is vitally important for the country's democratic future. In this respect, any electoral outcome that is bad for the Kremlin will be good for Russia.

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