

## **Victor Guschin (Moscow)**

### **We are not idiots, are we?**

The “Zhurnalist” (Journalist) magazine #8, 2003

*The article deals with consequences of the peculiar Russian laws banning free political speech for all but the officially recognized political candidates, for the duration of the official period of an election campaign.*

*Paragraph 7 of the article 48 of the 2002 federal law on elections prohibits journalists, during an election campaign, to publish material that either intentionally or unintentionally agitates for or against a political candidate or a party. The 2005 revision of the law has somewhat softened this prohibition, but it is unclear what effect, if any, this would have on the forthcoming elections of 2008.*

*The relatively liberal 1999 law on presidential elections referred to in the article appears to restrict paid political advertising in mass media to official candidates. The 2002 elections law put additional restrictions on election campaigning: paragraph 5 of the article 48, in conjunction with other articles of the law, could, and have been, interpreted as prohibiting any election campaigning other than the one financed through election funds of officially recognized candidates.*

*This is in this context that the described controversy over the right to campaign for the “none of the above” option, at the time mandatory present on the ballot, had arisen.*

*Already after publication of this article, the November 2005 decision of the Constitutional Court upheld the right to vote against all nominated candidates, to vote the “none of the above” option. It failed however to strike down laws effectively prohibiting election campaigning by citizens or organizations not affiliated with an official political candidate, and, by implication, prohibiting campaigning against all the candidates. Indeed in a recent decision (June 16, 2006) it upheld these laws.*

*The Duma it appears never acted on the directive of the Constitutional Court to provide legal basis for campaigning against all the candidates, and recently, in July 2006, it removed altogether the “none of the above” option from the ballot in both regional and federal elections.*

In Ancient Greece “idiots” were called those who were not taking part in elections. But we are! Why then I am asserting that 8 million voters have been already denied their rights, and the next elections will double this figure?

For the fourth year in a row I am waging a fierce war with Chairman of the Central Elections Commission, A. Veshnyakov, in defense of my constitutional voting right. I don't mean the right to push a ballot through a narrow slit that looks exactly like the aiming slit of a gun shield, and into the ballot urn<sup>1</sup> (cannot we find a better word for that thing?). This right we enjoy, though not the consequences.

It is not my vote but my voice as a voter that cannot be cast. During an election campaign, I cannot tell my fellow citizens why I am going to vote for one or another candidate, or why I intend to tick off the box on the “none of the above” line. This is my misfortune and misfortune of millions of voters. Until the Sergei Shoigu's<sup>2</sup> proposal to strip of the citizenship everybody who either willfully refuses to vote or votes for “none of the above” is implemented, we still can either cast our votes or abstain from voting, but we cannot advocate the choice we have made.

As to me, from the moment the “none of the above” option appeared on the ballot (that is from the December 1995 Duma elections) I have been always choosing it. The Duma elections of 1995 and 1999, presidential elections of 1996 and 2000, the Moscow mayoral and city council elections (twice): you name it and I'll tell you that I voted “none of the above”. And not a single time, during these election campaigns, did I have a chance to explain my choice to my fellow citizens.

Am I complaining that I, a professional journalist, have been denied the freedom of speech? Not really. But the matter is that I can enjoy this freedom only in between elections. Do you want to

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<sup>1</sup> «Ballot box” is called in Russian “ballot urn”.

<sup>2</sup> Sergei Shoigu – a popular and influential politician, the head of the Ministry for Emergency Situations

express your opinion? You are welcome. But not when it really matters: during the election campaign. The moment the official election campaign begins, any opinion voiced by a voter becomes election campaigning, which he or she is not entitled to conduct. The voter would now risk trespassing on the sovereign territory of Chairman of the Central Election Commission. The Chairman becomes the only judge what is election campaigning and what is not, who has the right to speak, and who should remain silent.

To have any voice in an election campaign, first one should become an official participant in the campaign and get his or her state campaign financing, with which to pay for campaign publications. Then go, campaign to your heart content: for “none of the above” or for a jack-in-the-box. But if you are doing it for free and without an authorization, than you are a subversive, and, as a lawbreaker, you will be punished and even criminally prosecuted.

Those were the issues over which I went to the court battle against Veshnyakov. My complaint was heard by the Supreme Court on March 26, 2000, right on the eve of the presidential elections campaign that gave victory to Vladimir Putin. An this is what I said there: “Your Honors! There are 11 candidates for the post of the President of Russia, but I don’t see among them a single one whose political platform has been clearly stated and who has demonstrated his grasp of political and managerial functions of the presidency, demonstrated the candidate’s appreciation of importance of the step he is taking and the responsibilities it entails. All 11 of them are talking about the same: how to improve economic, social, political, cultural, public hygiene, and epidemiological situation, and many other “situations” that afflict Russia. But we are not electing the Minister of Economic Development, or the Minister of Labor, or Culture, or Agriculture, or Environmental Protection, or the Chief Specialist on VD Prevention. For those jobs we can always find good specialists. We need a President who understands how the machinery of State functions, how the Constitution functions, how to improve this country’s laws. We have to be assured that he has the art of managing the society and the country and that his thinking is on the level required of a President. I respect all 11 of them, as a group and individually, for their personal and business qualities, but I don’t see a deserving candidate among them. I am not going to vote for anybody just to get somebody elected, and would like to advise others not to. Please, answer me, your Honors, do I have the right and can I, as a voter and a responsible citizen, make such an appeal to my fellow citizens and voters?”

And this is a slightly abridged text of the Supreme Court decision:

The argument advanced by the plaintiff, V.V. Guschin, asserting that promulgation by Chairman of the Central Election Commission of the provisions of paragraph 2 of the article 44 (of the Law on Presidential Elections) that regulates election campaigning by official participants in a campaign violates the citizens' right to freedom of expression and the right to freely cast their votes cannot be accepted. The reason being that the statement to the press made by Chairman of the Central Election Commission<sup>3</sup> concerning legal provisions regulating use of mass media in election campaigning, including those pertaining to calls to vote against all the candidates, is in full accord with the provisions stated by the Federal Law "On Elections of the President of the Russian Federation". The Supreme Court went on to assert that the law permits election campaigning in mass media by officially registered candidates only, or in their name, since it should be paid for by election funds of the candidates<sup>4</sup>. (Archives of the Supreme Court, GKPI 2000-316, March 27, 2000)

So, if you are not a candidate, if you are not on Veshnyakov's list, if you have not got a cent from the Central Election Commission, you cannot campaign for nobody. And the constitutional freedom of speech granted to every Russian citizen and the constitutional right to express both your will, and your opinion DIRECTLY (and not subject to authorization from above) in the course of free elections and referenda<sup>5</sup>, both count for nothing.

New elections are coming. There will be gubernatorial elections in Sankt-Petersburg, in September, then the parliamentary elections in December. There will be presidential elections in March 2004. But those who are against all the candidates will not have their voice heard. Simply because the Central Election Commission would never register a candidate called Noneof theabove.

In 1999, on the business trip in Vologda, I cast the absentee ballot for "none of the above". If not for me, and others like me, the Duma would have been short of 20, if not more, members, because elections in some single member constituencies would not have attracted the required number of voters. Who is to say that we, the "none of the above" crowd, are pathological obstructionists rejecting out of hand any candidate whatsoever? Perhaps we are casting a protest

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<sup>3</sup> This is a reference to the statement made by Aleksander Veshnyakov during a TV appearance in early March 2000, on the eve of the presidential election campaign. In the statement he warned voters against campaigning for the "none of the above" option, and threatened those who would advocate this choice with criminal prosecution on charges of "obstructing the exercise of voting rights", Article 141 of the Criminal Code.

<sup>4</sup> Paragraph 2 of the article 44 of the Law on Presidential Elections states that "election campaigning on television and in printed periodicals should be paid for by corresponding election funds of registered candidates", which may leave room for other interpretations.

<sup>5</sup> Unfortunately, the Russian Constitution contains no such norm.

vote, not against personalities, but against the system that has failed to make loafers work hard and bribe takers to work honestly. Perhaps our concern is public good. But we have to keep our mouths shut, or risk getting caught by Veshnyakov, who wants to get us convicted.

Since we cannot speak out, it looks as if we don't exist. However, 8 million people voted "none of the above" in the last Duma elections. In 8 federal voting districts the elections failed, because the majority vote went to the "none of the above" candidate. Some informed people think that the number will increase at least twofold in the next parliamentary elections. It means the "none of the above" party will number 16 to 18 million members, almost as many as the Soviet Communist Party used to have. And we all are now gagged, and the law that did it is no longer a hypothetical threat, but has passed the Duma this June, under pressure from the Central Election Commission. It has not yet been signed by the President, but in practice it is already functioning.<sup>6</sup>

I am not being overdramatic. Not at all. Let me quote a message we, the Association of Regional Newspapers Editors, received from Belgorod on the eve of gubernatorial elections there.

"...This week, Thursday morning, at 3 AM, security guards detained a group of young people, among them a girl, a student from the local University, an employee of an advertising agency, and an unemployed, pasting leaflets. The police was delighted to discover that the leaflets called for "none of the above" vote in the coming gubernatorial elections. The local Prosecutor Office has opened a criminal case against these young people, charging them, under the article 280 of the Criminal Code, with making "public appeals to commit extremist actions", which could get them up to three years of incarceration. . . A reliable source has reported that before approving the measure the Chief Prosecutor of the region had consulted "the very top" and got a green light to arrest the young people, as a warning to others not to distribute leaflets with unhelpful appeals..."

On June 26, Aleksander Veshnyakov said at the press-conference at the "Fund for Free Elections" that the new amendments to election law were taken to a test drive at the just

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<sup>6</sup> Apparently a reference to amendments to the Criminal Code of the Russian Federation passed by the Duma on June 27, 2002 and signed by President Putin on July 25. In particular, the amendments change the wording of the article 280: the punishable "public appeals for a forcible seizure of state power, its forcible retention, or for a forcible change of the constitutional system of the Russian Federation" were substituted with much more vague and wider in its scope "public appeals to commit extremist actions". The author could also mean other laws passed by the Duma about the same time, which provided sanctions for various violations of election campaigning laws, such as suspension of operation of mass media outlets and fines, and prison sentences for campaign financing irregularities.

completed gubernatorial elections in the Belgorod region, and have shown **SPLENDID** performance”.

What results did the “test drive” actually show? E. Savchenko, the incumbent candidate, won a convincing victory. But there was a fly in the ointment: 10% of the Belgorod region voters voted for “none of the above”, and in the city of Stariy Oskol, the most prosperous in the region, almost twice as many. Nothing like that ever happened there before. Does Veshnyakov mean that this is the kind of “splendid performance” that the Central Election Commission works to achieve in the September, December, and March elections?

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