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RUSSIA: Conscientious objection and the war, a major court decision

Conscientious objection and the war in Ukraine, a major court decision

The commandment "Don't kill" stood in court

By Anna Nikitina and Alexander Tvoropysh

Advokatskaya Ulitsa/ Lawyer Street, a group of Russian lawyers

The Process: "Special Military Operation"

Advokatskaya Ulitsa/ Lawyer Street (30.11.2022) – <https://advstreet.ru/article/zapoved-ne-ubiy-ustoyala-v-sude/> – A person who once completed alternative civilian service can no longer be sent to the active army during mobilization. This decision was made an hour ago by the Gatchina court in the region of St Petersburg in the case of a convinced pacifist, Evangelical Christian Pavel Mushumansky. In 2019-2021, he worked at the PNI instead of conscription, but in September 2022 he was mobilized on an equal footing with those who served – and even sent to a military unit. Now the order to mobilize Mushumansky has been canceled. His counsels approve this decision, but expect the Constitutional Court to decide on the right to ACS during mobilization.

A life according to the commandments

Pavel Mushumansky was drafted into the army in a peaceful 2019. He immediately announced his desire to undergo **alternative civil service (ASA)**. In fact, this is a usual paid work in public institutions – such as hospitals or nursing homes. If the conscript's beliefs do not allow him to take up arms, he can choose 21 months of AGS instead of 12 months in the army. Such a right is ensured by Part 3 of Art. 59 of the Constitution and the Federal Law on Alternative Civil Service.

Mushumansky explained that he is a deeply believing **Evangelical Christian** – and that military service contradicts his religion. The draft commission of the Gatchina municipal district of St. Petersburg agreed with this argument. From July 2019 to April 2021, Pavel Mushumansky worked as a conscientious objector at the Kingisepp Psychoneurological Boarding School, and then returned to normal life.

Then the “special operation” began. And on 21 September 2022, President Putin announced a “partial mobilization” to

replenish the army. On 24 September, Mushumansky received a summons to the military registration and enlistment office. The next day he went there, again told about his Christian beliefs – and reminded that he was “alternative”. However, the commission replied that “the law does not regulate the procedure for sending citizens for alternative civil service instead of military mobilization service.” Mushumansky was taken to a military unit, where he is still located. The man fundamentally refused to follow orders and wear military uniforms.

At a crossroads

In early October, 23-year-old Pavel Mushmansky soon filed an administrative claim to Gatchina City Court from his unit. He demanded that the decision to mobilize be declared illegal. A preliminary court session **was held on** 15 November at which the court **suspended the** decision of the draft commission and the effect of the summons to send him to the “place of service”. However, this did not give Mushumansky the right to leave the unit.

Representatives of the mobilized – the lawyer Alexander Peredruk and the lawyer Arseny Levinson – asked the Gatchina court to seek clarification of the situation in the Constitutional Court. Later, this petition was supplemented and sent back to court (Advokatskaya Ulitsa has a document).

The petition states that some provisions of the Mobilization Act do not comply with the Constitution. For example, paragraphs 2-4 of Article 17 states: the state may mobilize citizens who are in reserve and do not have the right to postpone. Nothing is said about ACS (Alternative Civilian Service) and religion; the only exception is a criminal record for certain serious crimes. As “Advokatskaya Ulitsa” told us, now even a conviction for serious crimes does not give a deferment – in Buryatia, the defendant in the case of attempted murder **was mobilized**.

The ACS is mentioned only in Article 17.1 – but it applies only to those who are already an “alternative” at the time of the mobilization announcement. At the same time, paragraphs 21 and 22 of the **Regulations** on the Mobilization of Citizens list the functions of the relevant draft commissions. And there is also no mention of the possibility of the commission to send a person to the ACS, Mushumansky’s representatives point out.

Peredruk and Levinson believe that the constitutional right to ACS should be preserved during mobilization. This absence violates the principles of freedom of conscience and religion. The defenders admit that Art. 56 of the Constitution allows the restriction of certain rights and freedoms of citizens during the state of emergency – but definitely not the right to freedom of conscience and religion.

The law on alternative civilian service says that the alternative civilian service “in the period of mobilization, martial law and wartime” is determined by federal laws and other normative legal acts. Thus, the legislator confirmed the possibility of choosing the alternative civilian service during the mobilization period, according to Pereruk and Levinson, but has not yet developed an appropriate mechanism.

“Advokatskaya Ulitsa” talked to representatives of Mushumansky on the eve of the meeting. They stated that the Gatchina court was at a fork. The first option is to recognize Pavel Mushumansky’s right to “repeat” ACS. The second is to satisfy the plaintiffs’ petition and ask the Constitutional Court to study the legal gap with the ACS during the mobilization period. This would also help other Russians who **demand** the right to ACS during the mobilization period.

Arseny Levinson noted that in 1996 and 1999 the Constitutional Court defended the right to ACS for conscripts. “It is clear that then the times were different, and the composition of the Constitutional Court is also much more free-thinking and focused on the protection of human rights, not state

interests," he said. "But we hope that the Constitutional Court will not abandon the legal positions formulated by it. After all, Russia was the first state in the world to introduce the institution of alternative service – this is our national, traditional value."

Alexander Pereduk added that at this stage of the proceedings, only the Gatchina court has the opportunity to seek clarification from the Constitutional Court. "In my opinion, he even has to do it," said the lawyer.

"It's abnormal, he shouldn't be in the army"

The meeting was held on 30 November and lasted more than three hours. At the beginning, Alexander Peredruk briefly reminded the court of the Christian beliefs of the principal. He said that Mushumansky in part does not carry out orders, does not wear a uniform – and even refused to receive cash payments due to the mobilized. Then the court studied the petition to send a request to the Constitutional Court – and denied it. The "motivation" for the decision is not yet available.

"Our position at the meeting was quite simple. We said that the court should proceed from the norms prescribed in the Constitution – despite the absence of a federal law. This position has been repeatedly expressed by both the Constitutional and the Supreme Court," said Peredruk.

Two hours later the defendant surprisingly demanded to close the meeting from the media. He explained that he could mention documents constituting official secrets. The court agreed with this argument – and journalists were asked to leave the hall.

"We proceeded to the consideration of the case on the merits, examined the evidence," said Peredruk. – As a result, the court declared illegal the decision to call Mushumansky for military service for mobilization. But, unfortunately, so far only the introductory and resolution parts have been announced, without "motivation". As soon as the court makes

this decision, we will study it carefully.”

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The lawyer suggests that Mushumansky should be returned home from the unit as soon as the court’s decision goes into effect. “His status as a serviceman is lost,” Peredruk added. – There is no reason to keep it.”

At the same time, it is still unclear whether Mushumansky should carry out again the ACS – now “mobilization”. “It’s too early to move ahead. The decision of the draft commission on mobilization has been canceled, no other decision has been made,” said Peredruk. “What will happen next is a task of the executive power, not the judiciary.”

In his opinion, this court decision is important primarily for those citizens who, like Mushumansky, previously opted for the ACS. On the day before, the City Court of St. Petersburg **refused** to replace the military service with an alternative one to the mobilized citizen Kirill Berezin from St. Petersburg. “But he, unlike Pavel Mushumansky, used to perform military military military service. These are still different things,” Peredruk stressed. – This does not mean that you can ignore the new views that people formed after serving in the army. But here Pavel Mushumansky is an “ideal applicant” because he has consistently professed his views for many years. The draft commission previously recognized his right to pass the ACS – and what has changed since then? Nothing. His views only strengthened. Of course, the state had to take this into account when making a decision. Unfortunately, the draft commission did not do it, but the court did it. Such a court decision is welcome. It’s a real act of justice.”

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Further reading about FORB in Russia in HRWF website

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