

By the Judgement of 3 June 2021 No. 26-II the Constitutional Court assessed constitutionality of Article 374, part three of the Labour Code of the Russian Federation.

This provision was subject to consideration insofar as it served as basis to decide on lawfulness of dismissal of head of an elected collective body of primary trade union organisation, who is not exempted from the main job, under Article 81, part one, item 2 of the Labour Code of the Russian Federation, where such dismissal has taken place without taking into account decision of the higher elected trade union organisation (disagreeing with dismissal) and before judicial decision recognising the said decision of higher trade union organisation unreasonable upon application of the employer has become final.

The challenged provision was recognised as not contradicting the Constitution of the Russian Federation since it does not allow dismissal of the said employee under the above grounds before judicial decision recognising the relevant decision of higher trade union organisation unreasonable upon application of the employer becomes final.

Dismissal of head of elected collective body of primary trade union organisation without taking into account the relevant decision of higher trade union is to be recognised as unlawful due to non-observance by the employer of the established order of dismissal. Yet, this conclusion does not necessarily lead to such consequences as unconditional restoration of relevant employee in office and compensation for his forced unemployment.

Where the only reason to recognise the concrete dismissal decision unlawful is the violation of the established procedure for obtaining consent of the higher trade union, a court is entitled to recognise dismissal as unlawful and change the date of dismissal to the date of recognition of disagreement of higher trade union organisation unreasonable by a final judicial decision, and to order payment of average wage to relevant employee for the period during which he was deprived of his or her job.