

By the Judgement of 12 October 2023 No.47-II, Constitutional Court of the Russian Federation assessed constitutionality of Article 65 (part 1) of the Federal Law «On Service in the Internal Affairs Bodies of the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation»

The above-mentioned legal provision has been considered in so far as, in the system of existing legal regulation, it served as a basis for resolving the question of whether an internal affairs officer could be released from duty in connection with temporary incapacity to work on the basis of a document issued by a medical organisation of the private health care system, which had been authorised to carry out expert examinations of temporary incapacity to work, and at the same time allows the dismissal of the person concerned for a serious breach of official discipline in the form of absence from duty, although the reason for that absence was his temporary incapacity to work, which was confirmed by a document issued by the medical organisation in question.

The contested legal provision, which aimed to ensure the implementation of state guarantees in the area of medical care provided to internal affairs officers due to the peculiarities of their legal status, was found not to be inconsistent with the Constitution of the Russian Federation.

The contested legal provision was also found to be inconsistent with the Constitution of the Russian Federation insofar as it completely excludes the possibility of an internal affairs officer being released from duty in connection with temporary incapacity to work on the basis of a document issued by a private medical organisation, which is authorised to carry out an expert examination of temporary incapacity to work, even in the presence of exceptional circumstances which objectively require referral to such a medical organisation for medical care, thus allowing the employee to be dismissed for absence due to temporary incapacity to work for reasons related to his or her culpable conduct.

Until the relevant amendments are made, it is possible for an internal affairs officer to be released from duty in connection with temporary incapacity to work in order to receive treatment (examination) in a private medical organisation authorised to carry out expert examination of temporary incapacity to work in these exceptional circumstances, provided that he or she notifies his or her immediate superior in advance (before undergoing the examination and/or treatment) and on the basis of an order issued by an authorised body (official). A refusal to release an employee may be challenged in court.

In the absence of such an order or of a judicial decision on such an appeal, but where the staff member's treatment in a private medical organisation was, or could have been perceived to be, of an urgent nature, absence from duty in order to receive medical treatment in a private medical organisation shall not, in exceptional circumstances, constitute grounds for dismissal for misconduct, provided that it is duly substantiated.