

By the Judgement of 20 July 2023 No.43-II, the Constitutional Court assessed constitutionality of Article 85 (paragraph 2 of part 2) and Article 96 of the Civil Procedure Code of the Russian Federation

These legal provisions were the subject of consideration insofar as they serve as a basis for ensuring payment for expert examination ordered by the court of general jurisdiction on the initiative of a party in a civil proceeding despite the fact that it is not possible to refuse to conduct an expert examination on the grounds that the amount of money for its payment has not been paid in accordance with the established procedure.

The Constitutional Court recognised the contested legal provisions as inconsistent with the Constitution to the extent that they do not provide guarantees for the payment for an expert examination ordered by the court in such cases.

Until appropriate legislative changes are made, these legal provisions shall apply to examinations appointed from the date of entry into force of this Judgement, taking into account the following features:

the court's decision on an expert examination can be adopted only after the party have previously deposited the payment for examination to the bank account opened to the relevant court in accordance with the procedure established by the budget legislation, or after considering the issue of consequences of non-payment by the party of the specified payment; at the same time, after the adoption of such a decision, refusal to conduct the examination within the time limit set by the court due to non-payment of the specified amount is not allowed;

if the party fails to pay for the examination within a reasonable time, the court assesses the consequences of non-payment and, if it is necessary to conduct an expert examination to make a lawful and reasonable decision in the case and if the party's failure to pay is conditioned by the financial possibilities of the party, it may order an expert examination in accordance with Article 96 of the Civil Procedure Code of the Russian Federation; but if the court comes to the conclusion that the failure to pay for the examination is not due to the financial possibilities of the party and constitutes an abuse of the right, it has the right to apply, by analogy Article 79 (part 3) of mentioned Code.