

**By the Judgement of 27 June 2023 No.35-II, the Constitutional Court assessed constitutionality of Article 152 (part 1) of the Labour Code of the Russian Federation and Paragraph 2 of the Decree of the Government of the Russian Federation “On the minimum wage increase for night work”**

These provisions were the subject of consideration to the extent that they serve as the basis for deciding on the amount of overtime and night work paid by an employee whose salary, without compensatory and incentive payments, is less than the minimum wage.

The contested provision of the Decree of the Government of the Russian Federation was recognised as not contradicting the Constitution, since it obliges the employer, to pay for night work in an increased amount compared to the payment for the same work performed during a period not related to night time.

The contested provisions of the Labour Code of the Russian Federation were recognized as inconsistent with the Constitution to the extent that, in the sense given to them by law enforcement practice, they allow payment of overtime based on only one component of an employee’s salary, without accrual of compensation and incentive payments.

Until appropriate legislative changes are made, the remuneration of an employee engaged in overtime work, whose salary includes compensation and incentive payments, is made as follows:

the time worked within the working time limit set for the employee is paid based on the calculation of the tariff rate or salary with the accrual of all additional payments provided for by the payment system, and the employee must be guaranteed a salary of at least the minimum wage, with no additional payments for work in conditions deviating from normal;

the overtime work is paid (in excess of the salary accrued to the employee for work within the working hours set for him) at the rate of one and a half (for the first two hours) or double (for subsequent hours) the tariff rate or salary with the accrual of all compensatory and incentive payments provided by the payment system for a single tariff rate or a single salary (official salary). Thus, the payment of overtime work should ensure an increased remuneration for the employee compared to the payment of similar work within the established working hours.

This does not constitute grounds for the employer’s unilateral refusal to comply with the terms of collective agreements, local regulations and employment contracts providing for higher overtime pay, as well as for the employer’s arbitrary cancellation of a more preferential overtime payment procedure.

Persons other than the applicant, who has the right to review the case, do not acquire the right to recalculate overtime pay based on this Judgement for the period preceding its proclamation.