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Institution of Conciliation Procedures in the Russian Federation: Problems of Doctrine and Law Enforcement

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Abstract

The judicial system is experiencing an increase in the workload in almost all countries due to the increase in the number of cases being considered, which certainly affects the quality of the administration of justice. In 2019, about 19 million cases in Russia were considered in the courts, with a population of about 140 million. In such circumstances, increasing the staff of the judicial staff is costly for the budget and senseless, which means that it is necessary to implement various conciliation procedures in the Russian legal system. Russia adopted a law in 2019 that establishes the institution of pre-trial and judicial reconciliation, but its effectiveness is almost zero. The authors analyze the epistemological essence of conciliation procedures and their applied significance at the doctrinal level in this article. Methods: the disclosure of the topic was carried out from the standpoint of general scientific methods (sociological, systemic, structural-functional, historical), the method of theoretical analysis, private scientific methods (comparative jurisprudence, technical and legal analysis, concretization, interpretation). The methodological basis of the study was the method of the theory of knowledge. The purpose of the study: To determine the essence of such categories as conciliation procedures; alternative dispute settlement procedures; pre-trial, out-of-court, and judicial dispute settlement procedures; to identify the relationship between conciliation procedures and civil proceedings; to determine the reasons for the low effectiveness of the use of conciliation procedures in Russia. Results: the gnoseological essence of conciliation procedures was revealed; their relationship with alternative dispute settlement procedures, the relationship between conciliation procedures and the civil procedure was shown, the reasons for the low efficiency of the application of conciliation procedures in Russia were revealed.

Key-words: Conciliatory Dispute Resolution Procedures, Alternative Dispute Resolution Procedures, Pre-Trial Procedures, Out-Of-Court Procedures, Judicial Procedures.

1. Introduction:

Russia is not the only country in the world experiencing a heavy burden on the judicial system. As a result, the issue of optimizing justice and finding ways to reduce the burden on the court is being updated both in the Russian Federation and in other countries. For example, according to the World Bank in Germany, it takes 31 procedures to process a single case, and the average time to process a case is 394 days.

The burden on the judicial system in Russia is constantly growing, which directly affects the quality of the cases under consideration. For example, the average monthly workload of magistrates in Moscow is 80 civil cases, 3 criminal cases, and 68 administrative cases. The average monthly workload of district judges is 54 civil cases, 5 criminal cases, and 18 administrative cases. A similar situation with the growing burden on judges takes place in other legal systems. Therefore, the state takes various measures in all countries of both continental Europe and the United States to promote and encourage out-of-court procedures for resolving legal conflicts. It is quite natural in these circumstances that the legislator in Russia also takes measures to encourage the disputing parties to resolve their legal conflict without resorting to the help of the court.

The foreign doctrine has long developed several dozen different types of conciliation procedures, such as arbitration, negotiation, mediation, conciliation, mini-trial, neutral expert fact-finding, the participation of the ombudsman, the private court system, and others.

The institution of conciliatory procedures did not exist in the positive law of Russia until October 1, 2019, and conciliatory procedures were practically not studied in the doctrine.

2. Methods:

In the course of the research, general scientific methods of cognition were used, including the principle of objectivity and consistency. Private scientific methods were used along with general scientific methods of cognition: theoretical analysis, comparative law, technical and legal analysis, concretization, interpretation, and the historical method of cognition. The methodological basis of the study was the method of the theory of knowledge.

3. Results:

As historical sources indicate, conciliation procedures were used in Russia even in the days of the Russkaia Pravda. Even though the text of the Old Slavonic normative act did not explicitly indicate the possibility of reconciliation of the parties to the dispute, article 54 provided for the possibility of agreeing with the debtor on compensation for damage before applying to the court. Later, in the Pskov Judicial Charter (1467), the right of litigants to a reconciliation was directly enshrined and provided for two ways of reconciliation: "extrajudicial reconciliation" (in the form of forgiveness of a debt or part of a debt) and "judicial reconciliation" – in the form of an amicable agreement, at the conclusion of which half of the paid state fee was returned. The provisions of Article 62 of the Pskov Judicial Charter provided for the right of the plaintiff to take less from the defendant than could be recovered by the court's decision, or to completely forgive the defendant as if to let go for nothing. As can be seen from these sources, the conciliation procedure was not directly enshrined in the norms of law but was mentioned implicitly.

As indicated in the literature, in later sources of Russian law, such as the Code of justice of 1497, Code of justice of 1550, reconciliation was not fixed in an allegorical sense, but directly provided for the possibility of settling the dispute before the trial – by peace. However, after the settlement of the dispute by peace, the parties still had to apply to the court for approval of the settlement agreement [1].

In the Council Code of 1649, a rule was established for the first time according to which the concluded settlement agreement not only terminates the dispute, and therefore the trial of the case, but prohibits repeated appeals to the court by the same party and on the same demand. Subsequently, many provisions of the Council Code were included in the Code of Laws of the Russian Empire in 1832 and were in effect until the adoption of the Charter of Civil Procedure in 1864.

The judicial reform of 1864 not only changed the judicial system of the Russian Empire but also many procedural provisions. Thus, by virtue of Article 70 of the Charter of civil proceedings, at a preliminary interview with both parties, the magistrate had to invite the parties to dismiss the case peacefully and explain to them the methods of such termination.

The interpretation of certain provisions of the Charter of Civil Proceedings gives grounds to assert that only if, as a result of the measures taken by the court, the parties do not want to end the dispute in peace, the judge makes a decision. Thus, the resolution of the case on the merits with the

decision of the judge was allowed only in the case when the parties did not want to end the case in peace.

The Statute of Civil Procedure of 1864 explicitly provided that reconciliation of the parties is allowed in any situation of the case, which leads to the conclusion that reconciliation was possible at later stages, including at the stage of appealing a court decision.

The result of the reconciliation was a "world deal", which could be made in the following ways:

a) by certifying the relevant document with a notary or a magistrate;

b) by filing a settlement petition;

c) by drawing up a settlement protocol.

Thus, as a result of the reconciliation of the parties (according to the Charter of Civil Proceedings), one of three documents could be drawn up: a world record, a world petition, and a world protocol. Unfortunately, the legislator did not give any of these documents mandatory executive force, which negated the importance of voluntary reconciliation of the parties.

The Civil Procedure Statute of 1864 also referred to conciliation proceedings in the arbitration court. However, it seems to us that this position of the legislator contradicted the epistemological essence of voluntary reconciliation of the parties, since arbitration proceedings are not aimed at reconciliation of the parties, but at resolving the dispute, in essence, when the parties did not find a consensus and did not want to end the dispute in peace.

Further, the mandatory rule on the obligation of judicial certification of a settlement transaction was changed by Senate clarification No. 678 in 1875, which stated that since the consequences of non-compliance with the form of a settlement transaction established by law are not legally established, it can be made in simple writing.

Unfortunately, the first Civil Procedure Code of the RSFSR of 1923 did not contain provisions on the reconciliation of the parties. It was indicated in the Civil Procedure Code of the RSFSR of 1964 about the settlement agreement as a way to terminate the proceedings in the case by reconciling the parties. The same rule was later adopted in the Civil Procedure Code of the Russian Federation of 2002. At present, it can be stated that the settlement agreement is a named civil transaction (on the novation of the debt or the forgiveness of the debt) and is a conciliatory procedure performed in the course of judicial proceedings.

Thus, it can be concluded that historically, the civil procedure legislation of the RSFSR, and then the Russian Federation, was fixed only one judicial conciliation procedure – a settlement agreement.

Conciliation procedures have existed for a long time in foreign jurisdictions, contributing to the development of economic relations and freeing the courts from disputes that can be settled voluntarily. Moreover, as noted in the Decision of the Grand Board of the Court of the Eurasian Economic Union "On compliance by the Republic of Belarus with the Treaty on the Eurasian Economic Union", an established rule in international legal proceedings is that the court finds that the Parties have exhausted conciliatory pre-trial dispute settlement procedures as grounds for applying to the International Court of Justice.

Unfortunately, conciliation procedures have not been widely used and are very rarely used in the Russian Federation. As G.D. Uletova rightly notes: "Today it is already obvious that conciliation procedures, including mediation, will not solve the complex problems facing domestic justice in the short and medium-term, which means that we need to look for a new vector (guidelines) for improving justice, including in the Russian procedural heritage" [2].

The constant increase in the number of cases considered by Russian courts and the negligible number of settlement agreements concluded in court prompted the legislator to look for other ways to reduce the burden on the court. Therefore, the law "On an alternative procedure for resolving disputes with the participation of a mediator (mediation procedure)" was adopted in 2010. The parties were granted the right to use, at their request, an additional conciliatory procedure such as mediation. A mediation agreement, unlike a settlement agreement, was concluded with the help of an intermediary – a mediator who was not a participant in the trial, and the mediator did not have a legal relationship with the court. Even though the institution of mediation appeared in the positive law of Russia more than 10 years ago, its attractiveness for the disputing parties is almost zero. Thus, a mediation agreement is concluded in the courts of general jurisdiction only in 0.007% of the total number of cases considered by the court, and in arbitration courts even less – 0.002% of cases considered by the court end in a mediation agreement, i.e. the effectiveness of mediation is practically zero, because the given figures may indicate a statistical error.

Given such low dynamics of the use of mediation, the Supreme Court of the Russian Federation in 2018 initiated judicial reform, aimed mainly at reducing the burden on the court, as well as at optimizing the trial process. As a result of the reform, in December 2019, Law No. 451-FL

was adopted, which supplemented the civil process with such types of legal proceedings as simplified proceedings, class action proceedings, aimed at relieving the judicial system from a large number of cases. Also, a new institution of conciliatory procedures, previously unknown to Russian procedural law, was established by law.

Currently, the authors haphazardly use the following concepts in the Russian scientific literature: conciliatory dispute settlement procedures, alternative dispute settlement procedures, pre-trial dispute settlement procedures, judicial dispute settlement procedures, restorative justice. Moreover, there is no single opinion about the essence of each of these concepts in the doctrine, all of them are used randomly. Therefore, it seems to us that it is necessary to define the essence of each of these concepts.

According to V.I. Kuzina, the term "alternative procedure for resolving a dispute" began to be used for the first time in the United States and meant informal methods of resolving disputes and resolving conflicts that arose in opposition to the complex and cumbersome official justice, became its alternative [3].

There is no consensus in the modern Russian doctrine on what is the essence of the concept of "alternative dispute resolution". According to G.V. Sevastyanov, alternative dispute resolution is the right to choose any method of dispute resolution not prohibited by law and the settlement of the conflict by the subjects of the disputed legal relationship, based on a specific situation [4]. According to S.S. Sulakshin, alternative dispute resolution is a method of non-judicial influence on the conflict, the purpose of which is to eliminate contradictions between the parties to the conflict or minimize the negative consequences of the conflict for its participants [5]. A.Yu. Konov believes that alternative methods of resolving disputes are a system of interrelated actions of the parties and other persons to consider a dispute that has arisen, aimed at its out-of-court settlement or resolution using conciliatory or other non-prohibited procedures [6]. It seems to us that the essence of alternative dispute resolution procedures is the way to resolve a dispute without a court and the participation of state bodies, as an alternative to the power-based dispute resolution procedure. An example of alternative procedures is pre-trial mediation. A.A. Begaev rightly notes that alternative ways of resolving disputes are a set of procedures and rules based on the principles of voluntariness, fairness, lack of power, developed or applied by the parties to the dispute to resolve a legal conflict without going to the courts [7].

Despite the different interpretations of the concept of "alternative dispute resolution procedures", all of them are united by the fact that this is not a judicial procedure for resolving a legal conflict, in connection with which A.S. Hishenko, as it seems to us, mistakenly pointed out the identity of the concepts of "alternative procedures" and "conciliation procedures". It is unlikely that this position of the said author can be accepted since alternative dispute resolution procedures should include the resolution of the dispute in arbitration courts, while the arbitration itself is not a conciliatory procedure. Conciliation procedures imply the voluntary nature of the settlement of a legal conflict, either with or without the help of a mediator. Arbitration proceedings are conducted when the parties have not reached a consensus, the dispute has not been resolved and they have referred it to the arbitration judge for authoritative resolution, whose decision can be enforced. Thus, the category of "alternative procedures" is broader compared to "conciliation procedures", the essence of which is the voluntary settlement of the conflict.

In addition to alternative and conciliatory dispute resolution procedures, pre-trial, out-of-court and judicial dispute resolution procedures should be distinguished as independent legal categories.

Out-of-court procedures are conducted when a lawsuit has already been initiated, but the dispute resolution procedure itself takes place outside the control of the court voluntarily – for example, negotiations.

Judicial procedures should include judicial reconciliation and judicial mediation, settlement agreement. These procedures arise within the judicial process when complex procedural relations with the participation of the court are formed. For example, a former judge participates in judicial reconciliation, and the lists of conciliators are approved by the Supreme Court of the Russian Federation. Thus, the court, as a judicial authority, is directly involved in the reconciliation of the parties. If a judicial conciliator participates in the process, the procedural relations are complicated by a new subject, previously unknown to the procedural science – the judicial conciliator, who enters into legal relations with both the parties to the process and the court. V. Gavrilenko points out that the judicial conciliator is not considered a participant in the proceedings [8]. Nevertheless, in this case, we are faced with the relations between the judicial conciliator and the other subjects of procedural relations, including the court, which have not yet been studied in the doctrine.

Pre-trial dispute resolution procedures are mandatory concerning the beginning of the trial, since the trial cannot begin without their compliance, and the process that has begun shall be

completed without a decision. Pre-trial mandatory procedures include the claim form of dispute settlement, the mediation form, and the administrative form of dispute settlement.

The claim form of dispute settlement, as a pre-trial procedure, is provided for by the Regulation on the Claim Procedure for Dispute Settlement of February 24, 1992, and in respect of labor disputes by the Labor Code of the Russian Federation.

The pre-trial administrative procedure for resolving a legal conflict is provided for, for example, in Article 101.2, paragraph 5 of the Tax Code of the Russian Federation. Following this rule of law, before going to court and challenging the decision of the tax authority, it is necessary first to appeal the decision of the tax authority to a higher tax authority. Without observing such a pre-trial procedure, the court does not have the right to proceed to the consideration of an administrative claim.

To date, the Russian doctrine has different points of view on how to relate the civil process and conciliation procedures [9]. The question of whether conciliation procedures are part of the civil process remains open.

The Civil Procedure Code of the Russian Federation was supplemented with a new chapter in 2019, 14.1, in the literal interpretation of which conciliation procedures should be considered part of the civil process. However, there are more unresolved issues. It remains unclear whether conciliation procedures in civil proceedings should be considered as an independent stage of the process, or whether the provisions of Chapter 14.1 of the Code are conceptually included in the existing stages of the process. It is also debatable whether pre-trial procedures and conciliation procedures are synonymous concepts.

It seems to us that, given that conciliation procedures can be applied at any stage of the process, including at the stage of execution of a judicial act, the actions of the parties committed within the framework of conciliation procedures are procedural actions performed within the stage at which these actions occur and therefore, they do not form an independent stage.

By far, the most effective conciliation procedures will be at the stage of preparing the case for trial, since they will relieve the court of unnecessary work, will contribute to the procedural saving of time, budget costs for legal proceedings, and will make the process of restoring the violated right or legitimate interest of one of the parties more effective. E.A. Nosyreva quite rightly notes that due to the complex nature of the tasks solved at the stage of preparing the case, it includes both actions aimed at organizing the future process and actions aimed at reconciling the parties and not bringing

the case to trial [10]. This, in fact, once again confirms the prudential nature of the thesis that conciliation procedures are not an independent stage of the process.

The position of individual authors in the doctrine of the Republic of Belarus is very interesting. In particular, I.A. Belskaya believes that the conciliation procedure meets all the characteristics inherent in an independent stage of the economic process and includes substages: preparatory (appointment of a conciliator); main (mediation); final (approval of the conciliation agreement) [11]. However, with all due respect to the author, one can hardly agree with this opinion. Each stage in the process has its strictly defined place and is located within the process not chaotically, but in a strictly regulated sequence, i.e. each stage sequentially follows one after another according to certain rules established by the civil procedural form. While conciliation procedures can take place at any stage of the process, their place in the process is not precisely defined by law. Therefore, it seems to us that the quintessence, in this case, would be the distinction between such concepts as stage and procedure. It is no accident that the legislator himself/herself calls conciliatory actions as a procedure, not a stage. Therefore, it is quite logical to assume that the process consists not only of stages that successively replace each other but also of procedures defined as a set of procedural actions that have a single purpose and are performed at any stage of the process.

Also, with the adoption of Chapter 14.1 of the Civil Procedure Code of the Russian Federation, another counter-issue arose that requires discussion. Chapter 14.1 of the Civil Procedure Code of the Russian Federation is referred to as "Conciliation procedures. Settlement agreement". Thus, the literal interpretation of the title of this chapter leads to the belief that the settlement agreement does not relate to conciliation procedures. Therewith, Article 153.3 of the Civil Procedure Code of the Russian Federation, in addition to such procedures as negotiations, mediation, judicial reconciliation, postulates that other conciliatory procedures that do not contradict the law can be used. In this connection, it can be concluded that the settlement agreement is also one of the conciliation procedures and is a set of actions aimed at ending the process voluntarily by the parties and committed at any stage of the process.

The Russian state has made justified efforts in recent years, to increase the share of pre-trial dispute settlement to relieve the burden on the judicial system. For example, Law No. 123-FL "On the Commissioner for the Rights of Consumers of Financial Services" of June 4, 2018, provides for a mandatory procedure for applying to the financial manager before the court for disputes related to the violation of consumer rights in the field of insurance services from June 1, 2019. Before presenting a

claim for no more than 500,000 rubles to an insurer included in the register of the Central Bank of Russia or a claim arising from a violation by the insurer of the procedure for implementing insurance compensation under compulsory civil liability insurance, consumers are obliged to submit the dispute to the financial commissioner for consideration. It is necessary to apply to the insurer before sending an appeal to the financial commissioner. If the consumer does not receive a response to his/her application from the insurer or the received response does not suit him/her, he/she has the right to send an appeal to the financial commissioner. Therewith, if the insurer is not included in the register of the Bank of Russia or in the list of financial organizations that have organized interaction with the financial commissioner voluntarily, the consumer has the right to declare claims in court without sending an appeal to the financial commissioner.

The consumer's request can be sent to the financial commissioner on paper or in electronic form (including through the personal account on the official website of the financial commissioner or through the public services portal). Consideration of consumer complaints is carried out by the financial commissioner free of charge. The exception is cases when applications are submitted by persons who have been assigned the right to claim a consumer of financial services to a financial institution. In this case, the fee for its consideration by the financial commissioner will be 15,000 rubles for each request. The decision of the financial commissioner is not necessary for the consumer, but it is mandatory for the person providing financial services. In case of disagreement with the decision of the financial commissioner, the consumer has the right to apply to the court with a claim against the defendant in the general order within 30 days after the date of its entry into force. The binding nature of the financial commissioner's decision is indicated by the fact that if the effective decision of the financial commissioner is not executed by the person providing financial services, the financial commissioner may issue an enforcement document for its compulsory execution.

Following the Russian procedural legislation, conciliation procedures should include: negotiations, settlement agreement, mediation, judicial reconciliation, these procedures can be applied during the judicial process. Therewith, there is a point of view in the doctrine, according to which the actions of the parties to a legal conflict committed by them before applying to the court can also be attributed to conciliation procedures. According to Yu.F. Bespalov, sending by one party to the other party a proposal for a pre-trial settlement of the dispute is a conciliation procedure [12]. Apparently, in this case, the author is referring to the claim procedure for settling the dispute. Indeed, it seems to us that the claim procedure is not part of the civil process, but it is certainly a conciliatory

procedure. Thus, conciliation procedures can be divided into two types: pre-trial and judicial. Pre-trial (alternative) dispute resolution procedures include: pre-trial mediation, filing a claim, and negotiations. Also, pre-trial conciliation procedures should include the resolution of a collective labor dispute, following the provisions of Article 40 of the Labor Code of the Russian Federation.

Conciliatory procedures are currently fixed not only by the procedural legislation (the Civil Procedure Code of the Russian Federation, the Arbitration Procedural Code of the Russian Federation, the Administrative Procedure Code of the Russian Federation) but also by the norms of substantive legislation (the Labor Code of the Russian Federation, the law on insolvency (bankruptcy) and other normative acts). In this connection, it seems to us that the institution of conciliation procedures is an intersectoral institution of law, which has as its subject both procedural and substantive legal relations, consisting of procedural and substantive rules of law aimed at settling a dispute without a court.

According to Russian law, the court is obliged to take measures to reconcile the parties, and therefore, is obliged to assist the parties in resolving the dispute in order not to bring the dispute to a court decision. Therefore, in facilitating the settlement of a dispute, the court is guided not only by the interests of the parties but also by the objectives of the proceedings in general.

Conciliation procedures should be based on the following principles:

- voluntariness,
- equality,
- cooperation,
- privacy.

The parties enjoy equal rights to choose a particular conciliation procedure, determine the conditions for its conduct. If a mediator is involved in the conciliatory relationship, the parties voluntarily choose the candidate of the mediator (mediator, judicial conciliator). The parties may enter into a separate agreement on this issue.

Reconciliation of the parties is possible at any stage of the civil process, as well as after the end of the proceedings, i.e. during the execution of a judicial act, unless otherwise provided by the Civil Procedure Code of the Russian Federation and does not contradict the federal law of the Russian Federation.

The conciliation procedure in court can be carried out both at the request of the parties and the initiative of the court, but the reconciliation itself cannot be mandatory for the parties, since the

principle of voluntariness applies here. The implementation of the consensus reached by the parties as a result of reconciliation is also voluntary, but this should be considered rather an undated principle than its dignity since it creates favorable conditions for an unscrupulous party to abuse its right and not implement a joint decision on reconciliation.

The court's initiative to conduct a conciliatory procedure may be contained in the ruling on the acceptance of the statement of claim (application) for production, on the preparation of the case for trial, or in another ruling on the case. The Court may also make an oral proposal to the parties.

If the court chooses any conciliation procedure, the proceedings in the case are postponed for no more than two months. Therewith, the period for which the case was postponed is not included in the term of consideration of the case but is taken into account when determining a reasonable period of legal proceedings.

If the parties agree with the court's proposal to conduct a conciliation procedure, or if the parties' request for its conduct is satisfied, the court issues a ruling on conducting a conciliation procedure and postpones the trial.

In the ruling on the conduct of the conciliation procedure, the court shall specify the following information: the names of the parties, the subject of the dispute, and the range of issues for the settlement of which the conciliation procedure can be used, the terms of the conciliation procedure. The definition may also contain other information necessary to ensure the proper conduct of the conciliation procedure.

The conciliation procedure must be completed within the time limit set by the court in the ruling on the conduct of the conciliation procedure. However, the specified period may be extended by the same court at the request of the parties.

In the course of using the conciliation procedure, the parties should strive to achieve positive results, including the resolution of the conflict as a whole or in part. Thus, it can be concluded that reconciliation is possible in terms of disputed claims.

If the parties have not reached reconciliation, refused to conduct conciliation procedures, or the deadline for their conduct has expired, the court resumes the trial following the procedure provided for in part three of Article 169 of the Civil Procedure Code of the Russian Federation.

The relevant question arises as to what purpose the parties pursue when choosing conciliation procedures. It is clear at the cognitive level that such procedures are aimed at achieving a positive result. The answer to this question raises another question: what should be considered a positive

result of the conciliation procedures? It seems that the following should be considered results of the conciliation procedures:

1) conclusion of a settlement agreement in respect of all or part of the claimed claims;

2) partial or complete waiver of the claim;

3) partial or full recognition of the claim;

4) full or partial rejection of the appeal, cassation appeal, supervisory appeal;

5) recognition of the circumstances on which the other party bases its claims or objections.

Thus, conciliation procedures are aimed precisely at achieving one of these goals.

The recognition of the circumstances, the recognition of the claim (individual claims), the rejection of the claim (individual claims) in full or in part are accepted by the court in the order of civil procedure.

The recognition of the circumstances on which the other party bases its claims or objections may be made in the form of a unilateral statement of agreement with the position of the other party. Thus, the recognition of the circumstances is always made in writing in the form of a petition (statement), the contents of which must be recorded in the minutes of the court session and signed by the party who confessed.

The procedural law in Russia was supplemented in 2019 with a significant new law that guarantees the participants of conciliation procedures their independence. In particular, the law stipulates that representatives of persons who participated in the conciliation procedure, mediators, judicial conciliators, are not subject to questioning as witnesses about the circumstances that became known to them in connection with participation in the conciliation procedure.

However, despite all the efforts of the Russian legislator to implement conciliation procedures in the legal space of Russia and thereby significantly relieve the judicial system from routine work, the practical effect of the adopted norms is insignificant. There are several reasons for this.

The main reason for the lack of effectiveness of conciliation procedures is that such procedures in Russia are more expensive for the parties than the judicial process. Conversely, cheaper conciliation procedures act as an alternative to expensive and lengthy legal proceedings in common law countries and European countries. Moreover, the high cost and duration are due not only to the trial but also to the pre-trial stage, which is carried out by the lawyers of the parties. For example, the state duty in Russia is from 3 Euros. Also, the Russian legislation has the institutions of installments

and deferral of payment of state fees, which makes the Russian legal proceedings for the parties almost free of charge.

The cost of a representative in Russia is also disproportionately less than in foreign countries. Instead of a representative lawyer, any person who does not even have a legal education can participate as a representative of the party in Russian civil proceedings, which also significantly reduces the cost of conducting the trial and makes it more attractive to the parties compared to conciliation procedures.

The duration of the pre-trial stage in common law countries can be up to 20 months. Therefore, the parties in such countries are more willing to go to an out-of-court reconciliation. For comparison, the pre-trial stage in Russia is up to 30 days, so it is unlikely that this can be an incentive for a pre-trial settlement of the dispute.

All these reasons significantly hinder the implementation of reconciliation procedures in the Russian process. However, it seems to us that there are still incentives for the use of conciliation procedures. Thus, only one of the 900 rulings to terminate proceedings in the case due to the reconciliation of the parties is appealed to a higher authority, i.e. less than 0.5% [13], while about 35% of judicial acts are usually appealed. Conciliation procedures are very convenient for the parties to a legal conflict since the dispute ends either before the court or when the case is considered in the court of the first instance, i.e. there is no need to spend time and money on appealing and participating in court sessions of higher courts.

Also, the advantage of reconciliation is its voluntary execution. For example, only 20% of rulings on termination of proceedings in a case due to reconciliation of the parties are issued the writ of execution, i.e. approximately 80% of court rulings on reconciliation are executed voluntarily by the parties.

4. Conclusion

The following conclusions were made as a result of the study.

The institution of mediation was legally established in Russia more than 10 years ago, but its attractiveness for the disputing parties is almost zero today. A mediation agreement is concluded in the courts of general jurisdiction only in 0.007% of the total number of cases considered by the court, and in arbitration courts even less – 0.002% of cases considered by the court end in a mediation

agreement, i.e. the effectiveness of mediation is practically zero, because the given figures may indicate a statistical error.

The essence of alternative dispute resolution procedures is the method of resolving a dispute voluntarily, without a court and the participation of state bodies, as an alternative to the governmental procedure for resolving a dispute.

Alternative procedures and conciliation procedures are not synonymous. Conciliatory dispute resolution procedures are conducted and executed based on the principle of voluntariness, while alternative procedures include proceedings in an arbitration court, the decision of which is made by the judge at his/her discretion and is subject to enforcement.

The conciliation procedures aim to achieve the following results:

- conclusion of a settlement agreement in respect of all or part of the claimed claims;
- partial or complete waiver of the claim;
- partial or full recognition of the claim;
- full or partial rejection of the appeal, cassation appeal, supervisory appeal;
- recognition of the circumstances on which the other party bases its claims or objections.

5. One of the reasons for the lack of effectiveness of conciliation procedures in Russia is that the judicial state process in Russia is less costly for the parties than conducting conciliation procedures with the participation of a mediator. Also, pre-trial training in Russia takes up to about one month, unlike in Western Europe and the United States, where pre-trial training can take more than a year.

6. In Russia, only pre-trial procedures that are mandatory before applying to the court (the claim form of dispute settlement and the pre-trial administrative form of dispute settlement) work effectively.

7. Conciliation procedures are not a stage of the civil process since each stage in the process has its strictly defined place and is located within the process not chaotically, but in a strictly regulated sequence, i.e. each stage sequentially follows one after another according to certain rules established by the civil procedural form. Conciliation procedures can be applied at any stage of the process and are based on the principle of voluntariness.

8. A distinction should be made between conciliation procedures and pre-trial procedures. Thus, in contrast to the voluntary nature of conciliation procedures, pre-trial dispute settlement

procedures are imperative, since the trial cannot begin without their compliance, and the initiated process shall end without a decision.

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