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Legal Grounds and Ethical Conditions of Alternative Forms of Criminal Law Conflict Resolution in Russia

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Abstract: The article's primary purpose is to reveal the potential of alternative forms of resolution of criminal law conflict in Russia's criminal and criminal procedure legislation. The scientific approach of the authors consists of conducting a comprehensive comparative legal analysis of the norms of international acts and foreign legislation regulating conciliation procedures in criminal proceedings. The scientific novelty lies in the systematic analysis of changes in the humanization of criminal proceedings in all countries based on recommendations developed by the international community. The methodological basis of the study was a set of methods of scientific cognition, among which the dialectical method occupies a leading place, which allowed for identifying the grounds, conditions, essential features, signs and ethical foundations of alternative forms of resolving criminal law conflict. Combining scientific cognition methods in research creates prerequisites for an objective and comprehensive approach to the identified problems. Based on general scientific dialectical methods of analysis, synthesis, abstraction, and concretization, as well as private, scientific comparative legal and technical legal methods, the authors concluded the importance attached to conciliation procedures, which have become an integral part of the legal system of the vast majority of countries. The authors argue that the institution of compromise in criminal proceedings is the core of alternative forms of resolution of criminal conflict in Russia. The author's concept of the formation of ethical conditions for alternative forms of resolution of criminal law conflict is a system of application of various means and methods, which contributes to the simplification and cheapening of the criminal process. The authors argue that such a technique as a compromise allows for minimizing all possible material costs and, most importantly, effectively implementing the purpose of criminal proceedings to protect the victim's rights. The development concept aims to develop new approaches to organizing the activities of the investigative bodies and the court to conduct conciliation procedures, which should encourage the accused to exhibit positive behavior and contribute to its correction. The ethical basis of the procedural compromise consists of such features as the proof of the circumstances of the criminal act, the achievement of contractual truth by inducing the accused to active repentance and voluntary repayment

of the harm caused. The ethical conditions of alternative forms of resolving the criminal law conflict in Russia create a moral basis for a compromise solution and provide an atmosphere of social trust in society.

Keywords: Criminal Proceedings. Conciliation Procedures. Exemption from Criminal Liability. Termination of Criminal Prosecution. Reconciliation of the Parties. Active Repentance. Special Proceedings. Agreement with the Indictment. Procedural Compromise.

1 Introduction

Cardinal transformations in the economic, political and ideological spheres of Russian society at the turn of the 20th and 21st centuries required fundamental changes in the legal regulation of newly emerging social relations. For example, the transition to a market economy entailed the liberalization of economic legislation, and in this regard, the softening of the principle of publicity in the relationship between the state and entrepreneurs. During the judicial and legal reform in 1996, many acts previously considered criminal were decriminalized in the new Criminal Code of the Russian Federation.

The liberalization of the criminal law, the rethinking of the institution of criminal punishment gave rise to the search for alternative measures to resolve the criminal law conflict in Russia. Agreements at the international level, primarily within the framework of the Council of Europe, have become a catalyst for new forms of resolution of the criminal-legal conflict in Russia. The first international document changing the paradigm of criminal prosecution and the imposition of criminal punishment was the recommendation of the Committee of Ministers of the Council of Europe of June 28, 1985. About the position of the victim in the framework of criminal law and the process.[1] The developers of this international legal act focused on the maximum legal protection of the victim. In order to create favorable legal conditions for compensation of harm to the injured countries, it was recommended to abolish existing restrictions or technical obstacles that block the implementation of such an opportunity. The legislation of countries should provide for compensation for harm to the victim when imposing a criminal sentence, be an

[1] On the position of the victim in the framework of criminal law and procedure: Recommendations of the Committee of Ministers of the Council of Europe of June 28, 1985 // The Council of Europe and Russia: collection of documents. M., 2004.

addition to it or become its replacement. In all other cases, it was recommended to help the victim to obtain as much money as possible.

We associate the changes in international legislation regarding persons brought to criminal responsibility and the development of measures for alternative forms of resolving criminal law conflicts with the adoption of the United Nations Standard Minimum Rules for Non-Custodial Measures.[2] Paragraph 1.2 of the Rules proclaims the goal – to ensure more active participation of the public in the administration of justice in criminal cases, especially in the treatment of offenders, as well as to promote the development of offenders' sense of responsibility to society. Member States were encouraged to develop non-custodial measures within their legal systems to provide other opportunities to reduce imprisonment, rationalize policies in the field of social justice requirements, and return the offender to normal life in society. The Prosecutor and the investigating authorities are granted the right to release the offender from responsibility if, in their opinion, there is no need to initiate a case in order to protect society, prevent crime or ensure compliance with the law and the rights of victims (clause 5.1). These rules encourage the involvement of volunteers and other public opportunities to resolve criminal law conflicts to strengthen ties between offenders and society. Thus, these international regulations have opened the prospect for the signatory countries to form alternative forms of resolving criminal law conflicts.

At the initial stage of constructing alternative forms of resolving criminal law conflicts in Russia, there were serious ideological, political, and legal obstacles. One of the key problems that hindered the introduction of alternative forms before the adoption of new criminal procedure legislation in 2001 should be called the provisions of Article 20 of UPK (the Criminal Procedure Code) of the RSFSR (Russian Soviet Federative Socialist Republic)[3], according to which the establishment of objective truth was required in criminal proceedings. The doctrine of objective truth presupposed the mandatory referral of a criminal case to a court where there are appropriate conditions for examining evidence and establishing the truth. In the Soviet era, the achievement of objective truth was considered the sole and immutable goal of proof. Currently, the attitude to objective truth in criminal proceedings is somewhat different, the essence of which is to ensure that the court decision is justified by the evidence available in the case.

Another problem relates to the requirements of establishing the truth in Russia – the dominance of public interest over private. The commission of a

[2] United Nations Standard Minimum Rules for Non-Custodial Measures [Tokyo Rules]. Adopted by General Assembly resolution 45/110 of December 14, 1990. URL: https://www.un.org/ru/documents/decl_conv/conventions/tokyo_rules.shtml.

[3] The Criminal Procedure Code of the RSFSR(Russian Soviet Federative Socialist Republic).

crime as a culpable socially dangerous act that encroaches on public relations protected by public law, and therefore the authority to resolve criminal law conflicts traditionally belongs to the State. The commission of a crime triggers a state-legal mechanism for the protection of public interest through the consideration of a criminal case in court with sentencing. Due to the requirements of the principle of publicity, the beginning of the criminal process, its movement and termination depends on the competent authorities acting on behalf of the State. In all cases of detection of signs of a crime, the criminal prosecution authorities are obliged to initiate a criminal case, comprehensively, fully and objectively investigate the crime, expose the perpetrators, regardless of whether the interested party asks them to do so.

The third problem we highlight is departmental public reporting for the number of criminal cases investigated and sent to court, as well as the number of cases considered in court. The quality of the work of officials of investigative bodies and judges is assessed by the ratio of the number of cases that have entered the proceedings with the number of cases sent to court, when any termination of criminal prosecution on non-rehabilitating grounds is a disadvantage in the work of the investigator or inquirer. The problem is to create an effective system of motivation of representatives of law enforcement and supervisory authorities in the implementation of the functions of reconciliation of conflicting parties.

There are problems of a general nature, for example, related to the growth of corruption when making decisions on the termination of criminal cases on a compromise basis. Many believe that freedom in making compromise decisions contains a potential threat of various corruption manifestations.

2 Changing the Paradigm of Law Enforcement in Relation to Alternative Forms of Resolution of Criminal Law Conflict

Despite the existing problems in Russia, a movement has begun towards increasing the number of decisions taken in the form of a criminal compromise. The appeal of international agreements and foreign legislation shows that there are 4 groups of alternative forms of jurisdictional socially positive impact on the criminal in addition to the traditional process of bringing the subject of the crime to criminal responsibility: warning, police fine (analogous to Article 76.1 of the Criminal Code of the Russian Federation), transaction and mediation. So, the resolution of conflicts in the field of criminal justice occurs in two main ways: by using traditional criminal procedural means – criminal prosecution and punishment, or by reaching a compromise between the parties. At the same time, the transaction is understood as the achievement of a procedural compromise agreement under the guidance

of officials conducting legal proceedings. Due to the absence of mediation in the Russian criminal procedure legislation, law enforcement practice is developing along the path of resolving conflicts in the field of criminal justice through a transaction, i.e., under the guidance of an investigator, an inquirer, a prosecutor, and a court. In this article we will focus on the analysis of the problems of legal grounds and ethical conditions of alternative forms of resolution of criminal law conflict in Russia in terms of achieving a procedural compromise, leaving out the warning and the police fine. At the same time, the main attention will be paid to the analysis of legal grounds, ethical requirements, means and methods of reaching a compromise to resolve the criminal conflict between the accused and the victim.

The theory of compromise served as the theoretical basis for the new paradigm of resolving criminal-legal conflict. By its own origin, the word "compromise" contains Latin origins, and is considered to be derived from "compromissum", which literally means "agreement based on mutual concessions".[4] As can be seen from the semantic explanation, the word "compromise" is used in those situations where the interacting parties are obliged to come to an agreement through mutual concessions in order to achieve mutually beneficial goals.

Considering the signs of compromise as such in the field of criminal law theory, the term "criminal law compromise" can be considered suitable for use, which is generally understood as a kind of agreement between the State, the victim and the person who committed the offense. Thus, modern compromise models of judicial proceedings are, first of all, a compromise of two principles – public and dispositive, the sphere in which they interact and mutually limit each other. The object of a criminal law compromise should be considered the amount of concession in the nature or scope of criminal liability measures that the State is ready to provide to a person whose behavior threatens, or damages public relations protected by criminal law, accepting the terms of the transaction. The object of a criminal law compromise may be a fixed amount of mitigation of criminal liability, or its elimination. Therefore, in the criminal law compromise, the state has a special role, which consists in initiating a concession that has legal significance and consequences, since it is the state that establishes the grounds and conditions of the compromise. The analysis of the norms of the Criminal Code of the Russian Federation makes it possible to identify 6 types of similar kind of concessions that have the significance of legal facts with which the criminal law connects the achievement of a compromise.[5]

[4] Ozhegov S.I. Dictionary of the Russian language: about 60,000 words and phraseological expressions / Under the general editorship of prof. L.I. Skvortsov. 25th ed., ispr. and dop. - M.: Mir i obrazovanie, 2008.

[5] Criminal Code of the Russian Federation of 13.06.1996 N 63-FZ (Federal Law) (ed. of 04.08.2023)// Internet portal of legal information http://pravo.gov.ru 25.09.2023.

Russian criminal legislation establishes the following substantive grounds for compromise: exemption from criminal liability in connection with active repentance (Article 75 of the Criminal Code), exemption from criminal liability in connection with reconciliation with the victim (Article 76 of the Criminal Code), exemption from criminal liability in connection with compensation for damage (Article 76.1 of the Criminal Code), exemption from criminal liability with the imposition of a court fine (Article 76.1 of the Criminal Code). The listed norms of the criminal law establish the conditions for their application: a person who has committed a crime may be released from criminal liability if the crime was committed for the first time; of small or medium gravity; voluntarily turned himself in; contributed to the disclosure and investigation of this crime; compensated for damage or otherwise made amends.

The criminal procedural grounds for compromise are set out in the Code of Criminal Procedure of the Russian Federation:[6] termination of a criminal case in connection with reconciliation of the parties (Article 25 of the Code of Criminal Procedure); termination of a criminal case or criminal prosecution in connection with the appointment of a criminal law measure in the form of a court fine (Article 25.1 of the Code of Criminal Procedure); termination of criminal prosecution in connection with active repentance (Article 28 of the Code of Criminal Procedure); termination of criminal prosecution in connection with compensation for damage (Article 28.1 of the UPK (the Criminal Procedure Code)). A new basis for compromise is Clause 7 of Article 24 of the Code of Criminal Procedure of the Russian Federation, which provides for a criminal procedural basis for termination of a criminal case in case of payment in full of arrears and corresponding penalties, the amount of the fine in the manner and amount determined in accordance with the legislation of the Russian Federation on taxes and fees and (or) the legislation of the Russian Federation on compulsory social insurance against industrial accidents and occupational diseases.

The analysis of the criminal law and criminal procedure grounds and the conditions for their practical implementation once again raises the key question of whether persons who have committed crimes should be exempted from criminal liability without fail if the conditions specified in the criminal law are met or leave the decision of this issue to the discretion of law enforcement agencies. There has been a discussion on this issue in the legal literature for a long time. Without going into this discussion, we take the position that the exemption of a person from criminal liability is due, on the one hand, to the discretion of the procedural body on the basis of establishing objective data of the circumstances of the case

[6] Criminal Procedure Code of the Russian Federation of 18.12.2001 N 174-FZ(Federal Law) (ed. of 13.06.2023))// Internet portal of legal information http://pravo.gov.ru 25.09.2023.

characterizing the data of the individual, and on the other hand, the grounds and signs established by the current criminal law. Our position justifiably allows us to assert that law enforcement agencies have the right, not the obligation, to be released from criminal liability even if all the stipulated conditions are met. This is evidenced by the provisions of the law, which stipulate that a person "can be released".

The procedural procedure for resolving a criminal-legal conflict may occur at the stage of pre-trial proceedings upon termination of criminal prosecution and termination of a criminal case on non-rehabilitating grounds, as well as in court with the consent of the accused with the charge (Chapter 40 of the Code of Criminal Procedure of the Russian Federation), a special procedure for making a court decision when concluding a pre-trial cooperation agreement (Chapter 40.1 of the Code of Criminal Procedure of the Russian Federation).

Despite the existing criminal law and criminal procedure grounds for alternative forms of resolution of criminal law conflicts, in the law enforcement practice of Russia there continue to be obstacles to the implementation of compromise in criminal proceedings. The reasons for this are different, from the personal qualities of the accused, victims; officials conducting legal proceedings; interpretations of state-legal public interest. The authors of this study consistently advocate the expansion of the practice of criminal compromise, and in this regard, they outline the rationale for their position below.

3 Substantiation of the Author's Concept on the Use of Alternative Forms of Resolution of Criminal Law Conflict

The presentation of one's position should begin with the establishment of the goal-setting of the criminal law. Among the main goals for the protection of the rights of the individual protected by criminal law, other objects of criminal law protection from criminal encroachments, we single out the principle of the inevitability of punishment. The meaning of the principle of inevitability is that any person who has committed a crime is subject to punishment or other measures of criminal legal influence provided for by criminal law. Inevitability is the best way to prevent crimes, and the severity of punishment alone is not capable of stopping a criminal. When applying criminal legal influence, it is always important to remember that a more severe type of punishment from among those provided for a committed crime is imposed only if a less severe type of punishment will not be able to achieve the goals of punishment (Article 60 of the Criminal Code). This means that the Criminal Code of the Russian Federation is aimed at the humanization of punishment and provides for the use of more stringent criminal legal impact.

Minimizing the criminal legal impact is aimed at preserving the identity of the accused as an actively useful member of society. Therefore, the driving force of the criminal legal impact should be the stimulation of positive post-criminal behavior of the accused, the formation of lawful behavior and attitude to protected values in his mind, and this means encouraging him to realize his illegal behavior, which should be the beginning of correction.

In connection with the development of the theory of resolving criminal law conflicts in an alternative form, the criminal law principle of inevitability acquires a new sound. The classical principle of inevitability should be understood not as the inevitability of punishment, responsibility and not even condemnation, but the state response to the fact of the crime committed. Such a state response can also be implemented in reaching compromise solutions based on mutual concessions. A new look at the principle of inevitability should launch a mechanism to stimulate positive behavior of the offender in making conciliatory actions and decisions on his part. The accused is offered a choice in what form to build his relations with the state about the crime committed by him. Realizing his right of choice, the criminal repents and voluntarily agrees to compensation for harm. In addition to achieving the goals of the criminal law, when resolving a criminal law conflict by compromise, the goals of the criminal procedure law laid down in art. 6 of the UPK (the Criminal Procedure Code), because there is compensation for harm to victims.

So, if we take as a basis three basic conditions: the recognition of a crime as a criminal-legal conflict; the achievement of the goals of the inevitability of criminal-legal impact as a reaction of state law enforcement agencies to the offense committed and the achievement of the goals of the criminal procedure law through compensation for harm, then the conflict is important not so much to resolve as to manage the conflict.[7] At the same time, it is important not only to determine who is right and who is to blame, but it is also important to look for ways to further develop the situation and the interaction of the parties to the conflict. In this aspect, it is advisable to pay attention to such a legal document as the Decision of the Committee of Ministers of the Member States of the Council of Europe of September 17, 1987 on the approval of the "out-of-court settlement of criminal law disputes" (discretionary prosecution),[8] which fixes the basic idea that alternative measures to resolve a criminal law conflict are effective and legitimate replacement of the main traditional elements of the state's reaction to the crime committed.

[7] Aryamov A. A. General theory of risk: legal, economic and psychological analysis. M. : Walter Kluwer, 2010. p. 200; Aryamov A. A. Economic and legal phenomenon "Risk". Chelyabinsk: Lurie, 2007. p. 110.

[8] Recommendations of the Committee of Ministers of the Council of Europe N R (87) 18 of September 17, 1987 "On the simplification of criminal justice" // SPS "ConsultantPlus".

4 Analysis of the Conditions for Achieving a Procedural Compromise as the Basis of an Alternative Form of Resolving a Criminal Law Conflict

To manage a criminal-legal conflict, it is important to create and ensure the conditions for its resolution. The rules for the application of alternative forms of solving a criminal law conflict can be systematized as follows. The first and initial condition for its achievement is legality. The terms of the compromise are not reached by the parties – they are established by law. These norms determine both the concessions that will be made to the accused when he performs positive post-criminal actions, and these actions themselves. Changes in the volume of concessions and the nature of actions by agreement of the parties are not allowed. The law, as it were, invites the parties to agree, under the circumstances, with the reasonableness of the conditions on which it proposes to resolve the conflict. If an agreement is reached, a compromise mechanism is used, if not, the case is considered in the usual procedural forms. Signs of the legality of a compromise solution are established in criminal procedures regulated by Articles 25, 25.1, 28, 28.1, paragraph 7 of Article 24 of the Code of Criminal Procedure of the Russian Federation, as well as Chapters 40 and 40.1 of the Code of Criminal Procedure of the Russian Federation. Compromise solutions apply only to crimes of small and medium gravity. No one will apply measures of alternative influence on the criminal to maniacs and murderers. Most of these measures require that they can be applied to persons convicted of crimes for the first time;

The most problematic, but also the most important condition of a criminal compromise is compensation for harm. The problem with this aspect lies in the fact that the accused often do not have money for damages. But ideally, the culprit should compensate the damage he caused to society (the state) and the victim. To solve the problem of the lack of money for damages, the legislator allows "to make amends for the harm caused by the crime in another way".

The next condition for reaching a compromise is the consent of the parties. Compromise is expressed in the reconciliation of the victim and the accused, with the consent of the preliminary investigation authorities or the court terminating the case. The consent of the victim is an integral part of restorative justice, and the opinion of the victim is decisive. In order to achieve these conditions in the form of compensation for harm and obtaining consent from the accused and the victim, mediation procedures[9] must be applied. Although the scope of this federal

[9] Federal Law "On Alternative Dispute Settlement Procedure with the Participation of an Intermediary (Mediation procedure)" dated 27.07.2010 No. 193-FZ (as amended Federal Law of 26.07.2019 N 197-FZ (Federal Law)).

law is aimed at applying the mediation procedure to disputes arising from civil, administrative, and other public legal relations, but it specifies the legal means and methods of reaching a compromise between the parties to the conflict. The main task of the mediator is the formation of motivation for voluntary compensation for harm caused by a crime. The mediation[10] method is characterized by the construction of flexible schemes that consider the interests of all conflicting parties, allowing them to get out of the traditional conflict deadlock. The more flexible the scheme is, the greater the variability of its implementation, the greater the chances of success in concluding a mediation conclusion. At the same time, the substitution of civil obligations for public-law criminal prosecution is actively used. In cases when the futility of further efforts to implement a mediation agreement becomes obvious, the procedure for this alternative form of resolving a criminal conflict is terminated and the potential of classical public prosecution is realized.

As recommended by the Committee of Ministers of the Council of Europe, mediation procedures include programs of negotiations for damages that exist solely in order to gain access to compensation or compensation to be paid by the offender to the victim, usually at the direction of the court, which includes provisions for damages in the court order.[11] The programs may include meetings between the parties, but more often separate, simpler and shorter negotiations with each party are held. The programs of negotiations on the issue of obtaining compensation do not concern reconciliation between the parties, but only the organization of obtaining material compensation. Which includes work programs in which criminals can earn money to pay compensation. Mediators should perform their duties impartially, with due respect for the dignity of the parties. In this capacity, mediators should ensure that the parties treat each other with respect and provide an opportunity for the parties to find an appropriate solution independently.[12]

Considering that mediation has no legal regulation in Russian criminal proceedings, and therefore it is necessary to use the transaction procedure, which

[10] For mediation in Palestine see SHAAT, Haia. Mediation in Palestine. Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 3, p. 231-249, 2020. For mediation in Brazil see: FERREIRA, Daniel B.; SEVERO, Luciana. Multiparty Mediation as Solution for Urban Conflicts: A case analysis from Brazil. BRICS Law Journal, v. VIII, n. 3, p. 5-29, 2021. DOI: https://doi.org/10.21684/2412-2343-2021-8-3-5-29. See also AWAD, Dora R. Mediação de conflitos no Brasil: atividade ou profissão? Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 4, p. 57-65, 2020; SEVERO, Luciana. Importância, funcionalidades e relação das cláusulas escalonadas na mediação e arbitragem. Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 4, p. 67-82; FARIAS, Bianca O. Mediação de conflitos em ambientes educacionais: um horizonte com novas perspectivas. Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 3, p. 157-194, 2020.

[11] Recommendations of the Committee of Ministers of the Council of Europe No. R (99) 19 of September 15, 1999 “On mediation in criminal cases” // SPS “ConsultantPlus”.

[12] The basic principles of the application of restorative justice programs in criminal justice matters. (Economic and Social Council resolution 2002/12 of 24 July 2002, annex). URL: https://www.unodc.org/documents/justice-and-prison-reform/R_ebook.pdf.

by its nature has many features in common with judicial mediation: the functions of an intermediary between two conflicting parties are assigned to a representative of a law enforcement agency (investigator, inquirer, prosecutor). There is the same endowment of public prosecution bodies with conciliatory functions. But the idea of the identity of the transaction with judicial mediation seems superficial. The fact is that the court, despite the public-legal nature of this state body, by virtue of the principle of adversarial criminal proceedings, performs the function of an independent arbitrator. He does not belong to either the prosecution or the defense, he seems to be standing over the participants in the conflict. And just as he makes an independent jurisdictional decision (verdict or ruling), he can lead the parties to a mediation (amicable) agreement on the same positions of independence.

The investigator, the inquirer, and the prosecutor traditionally belong to the prosecution side in criminal proceedings; their functions are inherently antagonistic to the interests of the accused (defendant). Can they serve as an independent mediator? In the laws on the police, on the prosecutor's office, on the investigative committee, it is possible to prescribe in detail the endowment of these persons with the functions of a mediator (that they contribute to the reconciliation of the parties and compensation for the damage caused). As long as the quality of the work of these persons is assessed by the ratio of the number of cases that have entered the proceedings with the number of cases sent to court, when any termination of criminal prosecution on non-rehabilitating grounds is a disadvantage in the work of an investigator or inquirer, one cannot seriously talk about this form of conciliation procedure. The problem lies not so much in the normative consolidation of transactional procedures, as in the creation of an effective system of motivation of representatives of law enforcement and supervisory authorities in the implementation of the functions of reconciliation of conflicting parties. The mechanism of motivation of criminal justice officials to conduct conciliation procedures is quite complex. The system of accounting for the quality and quantity of labor of law enforcement and supervisory authorities, the system of their incentives and penalties, the system of personnel selection needs to be radically changed.

Conciliation procedures for crimes that infringe solely on the interests of the state have their own characteristics, as a result of which an official (investigator, inquirer and prosecutor) can save the state budget. Thus, functionally, both participants in the process are oriented towards achieving the same goal, and this is the unifying basis for initiating the reconciliation procedure. And the suspect (the accused, the defendant) is also ready in most cases to join this process. The discussion is mainly about the quantitative characteristics of compensation. In this part, the institution of transaction often corresponds with the institution of

police fines, the size of the fiscal fine by agreement of the parties as a result of the conciliation procedure can be significantly reduced. The fulfillment of obligations by the State, represented by the relevant authorities and officials, is conditioned on the fulfillment of its part of the agreement by the accused.

When developing a criminal law compromise, it is important to ensure that the decision is made voluntarily by the accused and the victim, since the fulfillment by the accused of the obligations assumed in accordance with Articles 25, 25.1, 28, 28.1, ch. ch. 40, 40.1 of UPK (Criminal Procedure Code) is voluntary. He is motivated to commit positive post-criminal acts by his own interest, since the state encourages such behavior of the accused in exchange for favorable consequences for his fate. As a result, a public, socially significant interest is also achieved.[13]

One of the ethical problems of resolving the conditions of alternative forms of resolving a criminal conflict in Russia is the requirement to establish the truth. We proceed from the fact that if the legislator establishes the grounds and authorizes the investigator at the pre-trial stages to terminate criminal prosecution: in connection with the reconciliation of the parties (Article 25 of the UPK (the Criminal Procedure Code)in connection with the appointment of a criminal law measure in the form of a court fine (Article 25.1 of the UPK (the Criminal Procedure Code)); in connection with active repentance (Article 28 of the UPK (the Criminal Procedure Code)); in cases of crimes in the sphere of economic activity (Article 28.1 of the UPK (the Criminal Procedure Code)), there must be a different content of the truth. These procedural institutions allow participants in criminal proceedings to agree with the version of the prosecution, as well as with the content of knowledge in the collected evidence, and therefore it is impractical to verify their reliability in court proceedings with the participation of the parties. In this case, the truth achieved is of a contractual, compromise nature. In the literature it is called conventional. A conventional truth is considered to be recognized by such a convention, i.e. an agreement. A judgment is true not because it corresponds to reality, but because the subjects have agreed to consider it true.[14]

Summarizing the new approach to establishing the truth, we note that the legal consolidation of simplified judicial procedures, the expansion of grounds for termination of criminal prosecution, the use of other measures of criminal legal influence, constitutional and criminal procedural immunities and privileges, the

[13] Rusman, Galina. The active position of the court is the basis for the successful application of alternative measures in criminal proceedings. Revista Brasileira de Alternative Dispute Resolution – RBADR, Belo Horizonte, ano 04, n. 07, p. 89-101, jan./jun. 2022. DOI: 10.52028/rbadr.v4i7.6.

[14] Pastukhov P.S. What kind of truth is sufficient to implement the mechanism of criminal responsibility? Legal truth in criminal law and procedure. Collection of articles based on the materials of the All-Russian Scientific and Practical Conference. March 16-17, 2018 / North-Western branch of the Federal State Educational Institution "Russian State University of Justice" / Under the general editorship of K. B. Kalinovsky, L. A. Zashlyapin. St. Petersburg: Publishing House "Petropolis", 2018. 234 p. p. 153-165.

conclusion of a pre-trial cooperation agreement indicates a subjective approach to the outcome of the evidentiary process, where evidence can be evaluated at the stage of pre-trial proceedings and may not pass the test during the adversarial trial.

One of the most important of these conditions of compromise is active repentance. The essence of active repentance, as a type of positive post-criminal behavior, lies in the fact that a person, while admitting his guilt, not only verbally expresses remorse for what he has done, but also confirms it with concrete actions: voluntary surrender, active assistance in solving a crime, exposing other accomplices and searching for property obtained as a result of a crime, voluntary compensation property damage and moral damage caused as a result of a crime, other actions aimed at making amends for the damage caused to the victim.

The concept of remorse is closely related to the concept of guilt and shame. These feelings are related to each other, but there are some differences between them: shame is the feeling that you have been exposed and disgraced in the eyes of others, and guilt is associated with a person's inner self-esteem of their actions.[15] To repent means "to repent, to regret your act, to realize that the wrong thing has been done, to be killed by conscience, to be executed for the past. Later repentance does not save. There is no forgiveness without repentance.[16] Thoughts, mental state of a person, if they are not expressed externally in the form of concrete actions, deeds, are not the object of criminal legal assessment.

Active repentance is voluntary, active and timely actions of a person who has committed a crime for the first time, expressed in a full confession of guilt and remorse for what he has done, which is objectively confirmed by contributing to the disclosure and investigation of crimes or by compensation for the damage caused or other compensation for the damage caused, or by turning himself in or other actions indicating repentance.[17]

Alikperov H.D. believes that active repentance is "... not only a full confession by a person of his guilt in committing a crime and sincere regret (remorse) about what he has done, but also the provision by this person of assistance to law enforcement agencies in solving a crime, establishing, detaining and exposing other participants in the crime, as well as the voluntary surrender of the stolen, tools, objects of the crime, compensation for damage or compensation for damage caused by the crime, etc."[18]

15 See: Freud Z. Selected book I M., 1990. p. 98.

16 See: Dal V. Explanatory Dictionary of the living Great Russian language Vol. 4. M. 1982. p. 59.

17 See: Savkin, Alexander Vasilyevich Active repentance of a crime. Legal and criminalistic problems: Dissertation of Doctor of Law Sciences Moscow. 2002. p. 44.

18 Alikperov H.D. Exemption from criminal liability. – M.: Moscow Psychological and Sociological Institute of IPK(Institute of Professional Qualifications). RK (MANAGEMENT PERSONNEL) of the Prosecutor General's Office of the Russian Federation: Voronezh: Publishing house of NPO (SCIENTIFIC AND PRODUCTION ASSOCIATION) "MODEK". 2004. p. 34.

We do not consider it necessary to establish in each case the sincerity of the culprit and the motives of positive actions. In accordance with the approach adopted in domestic criminal law, the legislator leaves the inner world of a person out of the field of regulation. In addition, the degree and sincerity of remorse cannot be objectively measured, evaluated. Since the inner world is objectified in behavior, the conclusion about the presence of remorse and (to a certain extent) its degree can be made precisely by the behavior of the person who committed the crime. In our opinion, active repentance is the active, conscious, voluntary behavior of a person who has committed a crime, which is expressed in objective actions aimed at mitigating the negative consequences of what he has done, assisting in the investigation and disclosure of crimes.[19]

This is confirmed, in particular, by the opinion about active repentance as active voluntary actions through which a person who has committed a crime or interrupted its completion, guided by any internal motives, prevents, eliminates or reduces the severity of the harmful consequences of what he has done or assists law enforcement agencies in the disclosure and investigation of this and other crimes, which entails in cases provided for by law, exemption from criminal liability or mitigation of punishment.[20]

So, signs of active repentance can be considered: 1) admission of guilt; 2) sincerity in testimony; 3) voluntary repentance; 4) the desire to make amends for the harm caused; 5) self-condemnation of his act; 6) awareness of the public danger of the crime committed; 7) determination to atone for his guilt by correction and re-education.

Next, it is necessary to substantiate the moral and ethical basis of the procedural compromise. To do this, we emphasize once again that the substantive legal consolidation of the grounds and conditions for their application, the criminal procedure mechanism of law enforcement, the focus on achieving the goals of the criminal and criminal procedure law ensure its legality. As you know, the law is already the result of an agreement and consent.

In addition, the moral basis of the procedural compromise is provided by the voluntary form of behavior of its participants, prompt compensation for harm to the victim and the state, active repentance, stimulation of positive post-criminal behavior of the accused. The listed procedural conditions for concluding a criminal compromise do not contradict the moral foundations of society, since its result is achieved without the use of pressure, but on the basis of mutually acceptable concessions of the conflicting parties and is focused on an exhaustive solution to the incident.

[19] Petrikova S.V. The concept of active repentance in the criminal law of the Russian Federation// Socio-political sciences. 2012. № 3.

[20] Endoltseva A.V. Institute of Active Repentance in Criminal Law: Abstract of dissertation... cand. jurid. Sciences. –M., 2000. p. 7.

All of the above ethical conditions of alternative forms of resolution of criminal law conflict in Russia create not only a moral basis for a compromise solution, but also provide an atmosphere of social trust. Multilevel understanding of any complex legal phenomenon, freedom of judicial discretion and high credibility of the law enforcement officer are the cornerstones on which the doctrine of alternative forms of resolution of criminal law conflict is based. The creation of such an atmosphere reduces contradictions not only between the parties in a criminal case, but also social tension in society due to the humanization of criminal law policy.

The final aspect of the compromise solution is the procedural form of its conclusion. The law does not provide for the written execution of the parties' agreements on reconciliation, active repentance, and agreement with the indictment, but it is impossible to deny that the commission of positive post-criminal actions by the accused is a consequence of agreements with the prosecution. This conclusion is based on an analysis of the provisions of Articles 25, 25.1, 28 and 28.1, Chapters 40 and 40.1 of the UPK (the Criminal Procedure Code). Although the choice of a compromise procedure is made dependent on the will of the accused, and in some cases the victim, the actual initiator of the consideration of the case in compromise procedures is the criminal prosecution authorities, and in appropriate cases – the court. In particular, in order for the right of the victim and the accused to choose a procedural way to resolve the dispute to be realized, it must be explained to them. Such an obligation lies with the criminal prosecution authorities, the prosecutor and the court (Article 11 of the UPK (the Criminal Procedure Code)). So far, the legislator proclaims only a pre-trial cooperation agreement, without detailing its content. We assume that the absence of legislative regulation excludes the element of imposing a certain option on the parties to resolve the case, while preserving their complete freedom of choice whether to take advantage of the procedure or not. However, the fact that reconciliation of the parties is accompanied by negotiations in order to develop the most favorable conditions for reconciliation for the victim is beyond doubt.

The above conditions and grounds should be considered in their unity and interrelation. A sufficient set of circumstances must be established. The presence of only one of them should be understood as a separate independent and sufficient circumstance for the termination of a criminal case or criminal prosecution. Thus, a confession is one of the legal conditions included in the complex legal structure, explaining the grounds to the suspect or the accused.

Summing up the interim results of the study of the substantive and criminal procedural grounds and conditions of compromise procedures for resolving criminal conflict in Russia, we note their significance and impact on improving the effectiveness of criminal procedural activities. The effectiveness of any procedure

is determined by its ability to achieve the purpose of criminal proceedings. An effective procedure is based on a rational ratio of the criminal procedural forces and means used, in which the appointment of criminal proceedings is achieved with the least damage to various social values and within a reasonable time, while preserving the guarantees of the rights of participants in the criminal process and its principles. Compromise procedures, it seems, are precisely the way to rationalize the process of achieving the goals and objectives of criminal procedural activity, since some of them exclude the need for a number of stages of criminal proceedings, while others significantly simplify them.

Obviously, the principle of procedural compromise in criminal proceedings should be understood correctly and interpreted broadly depending on the specific circumstances of the case. That is, in this case, we are talking about the rational use by the law enforcement officer of all possible legal tools and methods (methods) for the speedy resolution of a criminal case, for example, to use compromise methods not in all criminal cases that are in production. At the same time, all procedural guarantees and possible negative consequences of using such a compromise should be prescribed by law.

5 Conclusion

In the course of the study of the grounds and ethical conditions of alternative forms of resolution of criminal law conflict in Russia, we came to the conclusion about the positive significance of procedural compromise for society, the individual and the state.

The institution of compromise in criminal proceedings forms the core of alternative forms of resolution of criminal law conflict in Russia. The use of alternative means of resolving a criminal conflict contributes to the simplification and reduction of the cost of the criminal process. Reasonable use of it can provide material and procedural savings of public funds. In general, it is safe to say that such a technique in the form of a compromise allows you to minimize all possible material costs, and most importantly, effectively implement the purpose of criminal proceedings.

Given the spread of procedural compromise throughout the world, we believe that it should be consolidated as a principle of criminal procedure. The procedural compromise reached in the presence of legal grounds and ethical conditions is intended to facilitate the prompt achievement of the purpose and purpose of criminal proceedings. The principle of procedural compromise should be aimed, first of all, at creating the necessary and optimal conditions for resolving a criminal case with the help of simple and accessible procedures for using them in criminal proceedings.

The institution of compromise with its rational construction in criminal, criminal procedure inevitably leads to the economy of criminal repression, and on the other hand, it is a legal instrument that encourages perpetrators to cooperate with criminal justice authorities and active repentance.

In these cases, the criminal law will act not through the investigation and the court, as has traditionally been the case, but directly, changing the psychology of the individual through the informational and educational aspect of criminal law regulation. At the same time, the peculiarity of the mechanism for implementing the institution of compromise is that in these cases, an alternative to criminal repression for the perpetrator is a real opportunity for him to redeem himself for what he has done without undergoing a punishment regime or by significantly reducing or mitigating it. The Rules are intended to ensure greater public participation in the administration of justice in criminal cases, especially in the treatment of offenders, as well as to promote the development of offenders' sense of responsibility to society.

In other words, the law shows such persons a shorter way of atonement through positive post-criminal behavior. Here, the center of gravity is transferred not to the intensive educational impact that continues during the term of punishment, but to the psychology of remorse, which encourages actions related to self-education.

The institution of compromise can also become a legal mechanism for implementing the principle of humanism in the fight against crime, because it leaves a real chance for everyone who has committed a crime to redeem himself for what he has done by accurately and timely committing positive post-criminal acts specified in the law.

The institution of compromise is a natural development of dispositive principles in criminal proceedings, which is a moderate variant of an alternative form of conflict resolution between the offender and society, as well as the victim of a crime.

In this part, we believe without exaggeration that there is a need for legislative consolidation and rational use of compromise in the criminal process of Russia. In order to improve the Criminal Procedure Code of the Russian Federation, we consider it necessary to consolidate not only the idea itself in the form of the principle of procedural compromise, but also the procedure for monitoring and supervising the use and application of such techniques in criminal proceedings.

References

Alikperov Kh.D. Exemption from criminal liability. M.: Moscow Psychological and Sociological Institute of the IPK(Institute of Professional Qualifications) RK(MANAGEMENT PERSONNEL) of the Prosecutor General's Office of the Russian Federation: Voronezh: Publishing house of the NPO(SCIENTIFIC AND PRODUCTION ASSOCIATION) "MODEK".2004.P.34.

Aryamov A.A. General theory of risk: legal, economic and psychological analysis. M.: Walter Kluwer, 2010. p. 200; Aryamov A.A. Economic and legal phenomenon "Risk". Chelyabinsk: Lurie, 2007. p. 110.

Awad, Dora R. Mediação de conflitos no Brasil: atividade ou profissão? Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 4, p. 57-65, 2020

Basic principles of the application of restorative justice programs in criminal justice matters. (Economic and Social Council resolution 2002/12 of 24 July 2002, annex). URL: https://www.unodc.org/documents/justice-and-prison-reform/R_ebook.pdf

Criminal Code of the Russian Federation of 13.06.1996 N 63-FZ (ed. of 04.08.2023)// Internet portal of legal information http://pravo.gov.ru 25.09.2023.

Dal V. Explanatory Dictionary of the living Great Russian language Vol.4. M. 1982.P.59.

Endoltseva A.V. Institute of active repentance in criminal law: Abstract of dissertation... cand. jurid. Sciences. M., 2000. p. 7.

Farias, Bianca O. Mediação de conflitos em ambientes educacionais: um horizonte com novas perspectivas. Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 3, p. 157-194, 2020.

Federal Law "On Alternative Dispute Settlement Procedure with the participation of an Intermediary (mediation procedure)" dated 27.07.2010 No. 193-FZ(Federal Law) (as amended. Federal Law No. 197-FZ(Federal Law) of 26.07.2019))

Ferreira, Daniel B.; Severo, Luciana. Multiparty Mediation as Solution for Urban Conflicts: A case analysis from Brazil. BRICS Law Journal, v. VIII, n. 3, p. 5-29, 2021. DOI: https://doi.org/10.21684/2412-2343-2021-8-3-5-29.

Freud Z. Selected book I M., 1990. p.98.

On the position of the victim in the framework of criminal law and procedure: Recommendations of the Committee of Ministers of the Council of Europe of June 28, 1985 // The Council of Europe and Russia: collection of documents. M., 2004.

Ozhegov S.I. Dictionary of the Russian language: about 60,000 words and phraseological expressions / Under the general editorship of prof. L.I. Skvortsov. 25th ed., ispr. and dop. M.: Miriobrazovanie, 2008.

Pastukhov P.S. What kind of truth is sufficient to implement the mechanism of criminal responsibility? Legal truth in criminal law and procedure. Collection of articles based on the materials of the All-Russian Scientific and Practical Conference. March 16-17, 2018 / North-Western branch of the Federal State Educational Institution "Russian State University of Justice" / Under the general editorship of K. B. Kalinovsky, L. A. Zashlyapin. St. Petersburg: Publishing House "Petropolis", 2018. 234 p. p. 153-165.

Petrikova S.V. The concept of active repentance in the criminal law of the Russian Federation// Socio-political sciences. 2012. n. 3.

Recommendations of the Committee of Ministers of the Council of Europe N R (87) 18 of September 17, 1987 "On the simplification of criminal justice" // SPS "ConsultantPlus".

Recommendations of the Committee of Ministers of the Council of Europe No. R (99) 19 of September 15, 1999 "On mediation in criminal cases" // SPS "ConsultantPlus".

Rusman, Galina. The active position of the court is the basis for the successful application of alternative measures in criminal proceedings. Revista Brasileira de Alternative Dispute Resolution – RBADR, Belo Horizonte, ano 04, n. 07, p. 89-101, jan./jun. 2022. DOI: 10.52028/rbadr.v4i7.6.

Savkin, Alexander Vasilyevich Active repentance of a crime. Legal and criminalistic problems: Dissertation of Doctor of Law Sciences Moscow. 2002. p.44.

Severo, Luciana. Importância, funcionalidades e relação das cláusulas escalonadas na mediação e arbitragem. Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 4, p. 67-82.

Shaat, Haia. Mediation in Palestine. Revista Brasileira de Alternative Dispute Resolution – RBADR, v. 2, n. 3, p. 231-249, 2020.

The Criminal Procedure Code of the RSFSR (Russian Soviet Federative Socialist Republic).

The Criminal Procedure Code of the Russian Federation of 18.12.2001 N 174-FZ (ed. of 13.06.2023))// Internet portal of legal information http://pravo.gov.ru 25.09.2023.

United Nations Standard Minimum Rules for Non-Custodial Measures [Tokyo Rules]. Adopted by General Assembly resolution 45/110 of December 14, 1990. URL: https://www.un.org/ru/documents/decl_conv/conventions/tokyo_rules.shtml.

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