

Conciliation procedures in criminal proceedings in courts of first instance in Russia

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Abstract: This paper focuses on the institute of conciliation in criminal proceedings in first instance courts of the Russian Federation. The research aims to examine the unique aspects of the reconciliation institution in criminal proceedings used to resolve criminal cases through justice in first instance courts. The author employed various research methods, including formal legal analysis, comparative legal methods, and a systemic approach to achieve this aim. The use of formal legal analysis allowed for the definition of special procedures for making a court judgment in accordance with the Criminal Procedure Code of the Russian Federation. Comparative legal analysis enabled the identification of the unique aspects of the reconciliation institution in criminal proceedings, which significantly differ from conciliation procedures in civil and arbitration proceedings. Applying a systemic approach to analyzing these features of reconciliation allowed for its consideration as a component of the system of special measures employed by the first instance court in criminal proceedings. It is concluded that differentiating the criminal procedural form preserves the guarantees necessary for achieving the objectives of the proceedings while maintaining its unity. All procedural features should be systematized and summarized in a special section of criminal procedure law. The court should be granted discretionary powers to integrate various features in a single case reasonably.

Keywords: Conciliation procedures. Differentiated proceedings. Court of first instance. Criminal proceedings. Criminal case.

Summary: **1** Introduction – **2** Conciliation mechanism to resolve disputes – **3** Differentiation of judicial procedures – **4** Special procedures for court judgments – **5** Proceedings with the specifics of hearing – **6** Proceedings on individual categories of criminal cases – **7** Proceedings concerning certain categories of persons – Conclusion – References

1 Introduction

The Russian model of criminal proceedings has a public-law nature because of historical and sociocultural legal traditions. Legal relationships have a pronounced authoritative character in the proceedings of courts of first instance. Therefore, a criminal case cannot be adjudged and resolved without a governmental official.

Criminal procedural relations are determined by criminal law and linked to the categories of ‘desirable’ and ‘undesirable’ human behavior, which the state

considers encouraged or condemned. Undesirable behavior, falling under the legislative ban, entails the emergence of a criminal case dispute between the state and the individual (in cases of private prosecution— between two individuals) to be resolved through justice.

After setting the line between desirable and undesirable human behavior, the state reserves the right to bring the offender to criminal responsibility. Thus, the offender becomes obliged to endure the restrictions and deprivations provided for thereby. The duty of state bodies to establish the guilt of the offender and bring him/her to criminal responsibility through a fair, independent, and impartial court guarantees the protection of the victim's rights from harm caused by the crime, regardless of his/her will (in cases of public and private-public prosecution). Therefore, the reconciliation institution in criminal proceedings differs significantly from conciliation procedures in civil and arbitration proceedings.

This paper aimed to examine the peculiarities of the reconciliation institution in criminal proceedings, which is used to resolve a criminal case through justice in courts of first instance.

To achieve the paper's aim, the author applied various research methods, including formal legal analysis, comparative legal methods, and a systemic approach. Formal legal analysis made it possible to define special procedures for making a court judgment following the Criminal Procedure Code of the Russian Federation. Comparative legal analysis allowed for defining the peculiarities of the reconciliation institution in criminal proceedings, which differ significantly from conciliation procedures in civil and arbitration proceedings. Applying a systemic approach to the analysis of the peculiarities of reconciliation allowed for considering it as a component of the system of special measures applied by the court of first instance in criminal proceedings.

2 Conciliation mechanisms to resolve disputes

The conciliation mechanism for conflict resolution is an innate, evolutionarily developed human function, to which culture introduces new components.¹ The histories of Russia and some foreign countries are rich in interesting conciliation procedures. Historically, in the 16th century, conciliation was normatively

¹ PREEZ, Du Olive, Conciliation: A Founding Element in Claims Management, *Procedia – Social and Behavioral Sciences*, 119, 115, 2014; BUTOVSKAYA M.L. Human ethology: human history and modern research problems // *Human ethology on the threshold of the 21st century: new data and old problems* / edited by M.L. Butovskaya. (Moscow, 1999); FERREIRA, D. B., GROMOVA E.A., TITOVA E.V. The Principle of a Trial Within a Reasonable Time and JustTech: Benefits and Risks, *Human Rights Review*, 25, 1. P. 47, 2024; FERREIRA, D.B., SEVERO, L. Multiparty Mediation as Solution for Urban Conflicts: A Case Analysis from Brazil, *BRICS Law Journal*, 8(3), 5-29, 2021.

established in procedures immediately preceding a trial and being an integral part thereof. Later, such procedures were carried out either simultaneously with direct judicial actions, or after court rulings, or replaced them.² In Russia, conciliation was codified in the 1775 Decree of Catherine the Great.³ It can be exemplified by courts of conscience, which considered criminal cases that required leniency to the offender due to mitigating circumstances. In contrast, in civil cases, they played the role of arbitration courts.⁴

The state can naturally have non-judicial types of conflict (dispute) resolution by various administrative bodies and through civil or arbitration justice.⁵ The initiation of a dispute by a private individual fundamentally distinguishes civil and arbitration proceedings from public criminal prosecution, where the dispute is initiated by authorized officials who are obliged to fully, comprehensively, objectively, and impartially investigate all the circumstances of the incident, without having any personal connection to the criminal case. In contrast, the court must resolve it through proceedings in the court of first instance. The initiator of a dispute in civil or arbitration proceedings is aware of all the circumstances of the upcoming trial, unlike persons called to investigate the circumstances of the incident after receiving an unverified and unconfirmed oral or written message about a committed or impending crime. The court, having received criminal case files with a criminal claim approved by the prosecutor, is obliged to examine all the circumstances of the incident and bring in a verdict of not guilty or pass a guilty verdict.

The criminal procedure literature debates on conciliation procedures. The authors refer to their sufficient distribution in England, Germany, Canada, the USA, Finland, and France⁶ to note the need to develop alternative dispute resolution methods,⁷ declaring the right to reconciliation of the parties to criminal proceedings

² RUBINSTEIN E.A. Regulatory regulation of the institution of termination of criminal cases in connection with the reconciliation of the parties: thesis of the Candidate of Legal Sciences (Moscow, 2004); GROMOVA, E.A., FERREIRA, D.B. Regulatory Sandbox: Bridging the Gaps by Designing a Dispute Resolution System. *Conflict Resolution Quarterly*, 2025.

³ Legislation of Catherine II: in 2 volumes/commentary by S.M. Kazantsev (Moscow, 2000).

⁴ SHAFEEK Sandy Sanbar, *Alternative Dispute Resolution Techniques*, Editor(s): American College of Legal Medicine, American Board of Legal Medicine, *Legal Medicine* (Eighth Edition) (Elsevier, 2025); SHIRYAEVA Y.V. History of conciliation procedures in Russia // *Executive Law* – 2008. – # 2. – P. 38–41; IQBAL, A. S. M. Tariq. *Alternative Dispute Resolution in commercial transactions: A comparative study between the UK and Bangladesh Jurisdiction*. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 06, n. 12, p. 207-222, jul./dez. 2024.

⁵ FERREIRA, D. B. GROMOVA, E., TITOVA, E. V. The Principle of a Trial Within a Reasonable Time and JustTech: Benefits and Risks, *Human Rights Review*, 25, 1, p. 47, 2024; FERREIRA, D.B., GROMOVA, E. A. Emergency arbitration in sports: a case analysis of the Brazilian experience, *International Sports Law Journal*. 2024.

⁶ BOLSHOVA A.K. On the conciliation procedure with the participation of an intermediary, *Journal of Russian Law*, 5. P. 19, 2004.

⁷ BEVAN A.H. *Alternative Dispute Resolution: a lawyer's guide to mediation and other forms of dispute resolution* (London: Sweet & Maxwell, 1992); VOSKOBITOVA L.A. Prospects for the development of the institution of reconciliation of the parties in criminal proceedings in Russia, *Justice of the Peace*, 1, P. 10,

to be an integral part of human rights,⁸ and the parties' reconciliation itself – an agreement on the resolution of a criminal case (dispute) of a private nature.⁹ We agree with L.P. Maslennikova, who notes that the relationship between the public and discretionary principles in criminal proceedings is expressed through the interests protected and defended in the sphere of criminal proceedings, and the main criminal procedural interest expressed through the purpose of criminal proceedings in Art. 6 of the Criminal Procedure Code of the Russian Federation generally predetermines the substance of the public principle and its relationship with the discretionary principle, since the regularities of the relationship between state power and the individual in society and the social purpose of criminal proceedings condition it.¹⁰

The national specifics of legal proceedings for resolving criminal cases in each state are formed due to its historical development, cultural traditions, and experience of reforming the judicial system. The transformations in Russia did not go without legal acculturation to improve the form of criminal proceedings in courts of first instance. However, according to V.D. Zorkin, the obstacles to these transformations were the asynchronous historical movement and the fundamental cultural specifics of the states. Therefore, things believed to be blessings in some cultures may not be considered blessings in others, and things hypertrophied in some cultures may be frustrated in others. Each nation has its way.¹¹

3 Differentiation of judicial procedures

Russia did not formalize the term 'conciliation procedures' in legal proceedings and chose to differentiate judicial procedures for resolving criminal cases on the merits.

2019; GUSKOVA A.P., MATKINA D.V. Mediation in criminal proceedings, *Russian judge*, 2, P. 34, 2009; KARNOZOVA L.M. The place of reconciliation and mediation in the doctrine of criminal justice, *The State and Law*, 9, P. 113, 2006.

⁸ CEMERLANG, A. M., & SISWANTO, H. Penal Mediation by Police Institutions In Handling Middle Crimes In Realizing Restorative Justice Principles. *Pranata Hukum*, 16(2), 99-109, 2021; SAVCHENKO A.N. The right to reconciliation of the parties to criminal proceedings is an integral part of human rights, *Russian judge*, 3, P. 11, 2007.

⁹ ANTONY, A. Balancing Justice and Reconciliation: Restorative Approaches to Criminal Defamation Settlement. *Barelang Journal of Legal Studies*, 1(1), p. 15, 2023; PAVLUSHINA A.A., PONOMARENKO V.A. Conciliation procedures in criminal proceedings: history and modernity, *Criminal proceedings: theory and practice*, 2, P. 865.

¹⁰ MASLENNIKOVA L.N. Factors determining the development of criminal proceedings in Russia, URL: <http://www.iuaj.net/node/441> (accessed on 26.02.2025).

¹¹ ZORKIN V. D. Lectures on Law and the State: St. Petersburg. Constitutional Court of the Russian Federation, P. 299, 303, 2024.

'Differential' is defined as changing depending on some conditions.¹² A proceeding to resolve a criminal case that changes depending on the conditions can be called a differentiated proceeding.

The science of criminal proceedings debates the admissibility of differentiating criminal procedural forms. Scholars' opinions tend to revolve around potential unification but not differentiation. In contrast, opinions on the advisability of distinguishing various criminal procedural forms, which essentially result from their differentiation through complication or simplification, exist.¹³

It seems appropriate to study the required conditions, including conciliation procedures, that must be observed when choosing the proceedings for resolving a criminal case.

Depending on the list of obligatory conditions, all differentiated proceedings for resolving a criminal case in courts of first instance should be classified as follows: 1) two proceedings with a special trial procedure: a court ruling is made when the accused consents to the charges brought against him/her (Chapter 40 of the Criminal Procedure Code of the Russian Federation), a court ruling is made upon entering into a pre-trial cooperation agreement (Chapter 40.1 of the Criminal Procedure Code of the Russian Federation); 2) two proceedings having special features: proceedings on criminal cases within the jurisdiction of the justice of the peace (Chapter 41 of the Criminal Procedure Code of the Russian Federation), proceedings on criminal cases considered by the jury trial (Chapter 42 of the Criminal Procedure Code of the Russian Federation); 3) three proceedings on separate categories of criminal cases: proceedings on criminal cases against minors (Chapter 50 of the Criminal Procedure Code of the Russian Federation), proceedings on involuntary treatment (Chapter 51 of the Criminal Procedure Code of the Russian Federation), proceedings on administering a criminal law measure upon liberation from criminal responsibility (Chapter 51.1 of the Criminal Procedure Code of the Russian Federation); 4) one proceeding with the specific features of the subject: proceedings on criminal cases against certain categories of persons (Chapter 52 of the Criminal Procedure Code of the Russian Federation).

4 Special procedures for court judgments

The conditions for a special procedure for making court judgment when the accused agrees with the charges brought against him/her (Chapter 40 of the Criminal

¹² OZHEGOV S.I., SHVEDOVA N.YU. Explanatory Dictionary of the Russian language: 80 000 words and phraseological expressions / Russian Academy of Sciences; Russian Cultural Foundation. 3rd reprinted edition. (Moscow, 1996).

¹³ RUSTAMOV H.U. Differentiation of forms of criminal procedure: modern trends and problems of improvement: abstract of a thesis of the Doctor of Legal Sciences. (Moscow, 1998).

Procedure Code of the Russian Federation) include: minor or medium gravity of the crime the person is accused of; the accused agrees with the charges brought against him/her; and the prosecution agrees to hear the case in such proceedings. Special proceedings can reduce their duration, while preserving all stages with certain features. The preparatory stage is characterized by the confirmation of the accused person's voluntary consent to a special proceeding, consultations with the defense attorney, hearing the opinion of the state prosecutor and victim on their consent to a special proceeding. The defendant thus reconciles with the state, agreeing with the charges brought against him/her. Judicial investigation is characterized by the lack of necessity to check and examine the evidence of the charges brought, since the accused filed a petition for special proceedings to agree with the evidence collected during the preliminary investigation. Evidence characterizing the personality, which aggravates or mitigates the punishment, is subject to examination. The parties' oral arguments are presented in the form of statements made by the parties to the proceedings regarding the punishment of the accused, without affecting the proof of the crime event, the labelling process, and the defendant's guilt. The verdict is passed in the same order as in the court proceedings of first instance, with no analysis of the evidence therein. Therefore, special proceedings also entail a special procedure for appealing the verdict in the court of second instance, excluding such grounds for appeal as the discrepancy between the court's findings set out in the verdict and the factual circumstances of the case, as well as the illegality of the criminal labelling process.

Experts consider this procedure a simplification of the procedural form to optimize judicial activities,¹⁴ though they call it a conciliatory plea bargain inherent in the Anglo-Saxon legal system.¹⁵ We believe such a procedure is similar to the 'reconciliation deal'. However, all guarantees for the protection of the rights and legitimate interests of individuals and organizations that have suffered from crimes, as well as individuals who have suffered from illegal and unfounded accusations, convictions, restrictions on their rights and freedoms, and the imposition of a fair punishment on the guilty, are preserved. There is an opinion that the enshrinement of special procedures in law should be deemed an incentive for trends in criminal proceedings.¹⁶ Since incentives are of a reward nature, all reconciliation actions taken by a person who has committed a crime can be considered as lawful behavior contributing to the resolution of a criminal case. A survey of law enforcement officers

¹⁴ ROSSINSKY S.B. Special procedure of judicial proceedings as a form of proving the circumstances of a criminal case: objections to opponents, *Laws of Russia: experience, analysis, practice*, 4, P. 40, 2016.

¹⁵ ANTONY, A. Balancing Justice and Reconciliation: Restorative Approaches to Criminal Defamation Settlement. *Barelang Journal of Legal Studies*, 1(1), p. 15, 2023.

¹⁶ RUSMAN G.S. The procedural nature of incentive legal relations in criminal proceedings: problem statement, *Bulletin of the South Ural State University, Series: Pravo (Law)*, 40, P. 75, 2011.

showed that they mainly perceive the differentiation of the criminal procedural form not as simplified or complicated proceedings, but as special proceedings, including those of a reconciliation nature (85% of judges, 62% of prosecutors, 46% of lawyers).

Thus, while maintaining all stages of proceedings in courts of first instance, the purpose of the special procedure is to resolve a criminal case. Its tasks are somewhat transformed: on the one hand, they are simplified, and their solution is accelerated, since the processes of collecting and examining evidence of the defendant's guilt are omitted. However, they are complicated by the need to comply with several additional conditions in the proceedings. Additional conditions for solving problems determine the 'special nature' of such proceedings but do not affect their purpose. Therefore, these are essentially cases in courts of first instance.

A special procedure for making a court judgment is used when entering into a pre-trial cooperation agreement (Chapter 40.1 of the Criminal Procedure Code of the Russian Federation). Such proceedings can be effective if the agreement is entered into at the stage of pre-trial proceedings; the information provided by the accused contributed to the exposure of accomplices, the disclosure of other crimes, or the discovery of stolen property; the petition was filed by the accused voluntarily, set out in writing, and signed by the defense attorney; the agreement was entered into under the supervision of the prosecutor who made sure that the accused fulfilled the terms and conditions thereof and filed a petition for special proceedings.

Although the prosecutor's motion is a prerequisite condition for special proceedings, the judge makes the final decision on such proceedings in a criminal case after holding a preliminary hearing and personally ensuring that all the necessary terms and conditions of the agreement are met, i.e., that there are no obstacles to hearing a criminal case on the merits.

Certain specific features also characterize the court hearing procedure. First, it is conducted according to the rules provided for the proceedings if the accused consents to the charges brought against him/her. Second, a judge who heard a criminal case against accomplices to a crime in which a person who entered into a pre-trial cooperation agreement is accused cannot hear a criminal case against such a person. Third, the presentation of charges by the state prosecutor has its own specific features, since the facts confirming the defendant's assistance to the investigation should be clarified to the court. Fourth, the defendant has the right to testify on the charges brought against him/her, while the defense attorney and the state prosecutor have the right to ask him/her questions. Fifth, the nature and limits of the defendant's assistance to the investigation; the significance of cooperation for the investigation; the degree of threat to the defendant's personal safety during cooperation; as well as the circumstances characterizing his/her personality, which mitigate or aggravate the punishment, are examined.

In such proceedings, the court does not examine and assess the evidence collected in the criminal case, since the defendant entirely agrees with the charges brought against him/her. Given the specifics of this procedure, it cannot be called simplified. Notably, it is characterized by assistance in investigating a crime, which is an attempt to reconcile with the state through cooperation.

All the features of the proceedings when entering into a cooperation agreement give grounds to assert that its purpose is to resolve a criminal case, which coincides with the purpose of proceedings in courts of first instance. The objectives of the proceedings when a cooperation agreement has been entered into have several specific features due to the conditions provided for such proceedings.

According to the Judicial Department under the Supreme Court of the Russian Federation, in 2023, over 311,000 criminal cases were considered and resolved using the special procedure when the accused consented to the charges brought against him/her, which is 43% of the total number of criminal cases ended with a verdict or a ruling to terminate a criminal case; over 3,000 criminal cases were considered using the special procedure when a pre-trial cooperation agreement was entered into, which is 0.4% of the total number of criminal cases ended with a verdict or a ruling to terminate a criminal case.¹⁷

Thus, these proceedings are not simplified because additional conditions, including conciliation procedures, are needed to resolve a criminal case using this procedure.

5 Proceedings with the specifics of hearing

Proceedings in criminal cases under the jurisdiction of a justice of the peace (Chapter 41 of the Criminal Procedure Code of the Russian Federation) and those considered by a jury trial (Chapter 42 of the Criminal Procedure Code of the Russian Federation) have their specifics.

The specifics of proceedings in criminal cases under the jurisdiction of a justice of the peace include: the jurisdiction is limited by law, since the list of crimes under the jurisdiction of a justice of the peace depends on the term of punishment not exceeding three years of imprisonment, and the list of crimes that are excluded from the jurisdiction of a justice of the peace; sitting of a single judge; use of conciliation procedures; reduced periods for hearing cases; assistance to the parties in collecting evidence to substantiate their position; proceedings in private prosecution cases.

¹⁷ Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2023 Electronic resource, <https://cdep.ru/index.php?id=5> (accessed on 12.02.2025).

The proceedings before a justice of the peace in cases of public, private-public, and private prosecution, when the claimant has no information on the criminal, bear all the marks of proceedings in a court of first instance. Therefore, we should focus on the specifics of proceedings before a justice of the peace in cases of private prosecution, when the claimant has information on the criminal. There are no pre-trial proceedings for this category of criminal cases, i.e., the accusational thesis has not been formulated before the court proceedings, which makes such proceedings special.

In criminal cases of private prosecution, the private interest of the individual determines, regardless of social interests, as opposed to criminal cases of public and private-public prosecution, where the public interest prevails. At the same time, the private interest allows the parties to reconcile when resolving a criminal case.

A criminal case is heard and resolved according to the structure of proceedings in courts of first instance, subject to the principles of criminal proceedings and general litigation conditions.

Since there are no pre-trial proceedings in such criminal cases, the preparatory stage, judicial investigation, and sentencing procedures have several distinctive features while maintaining their purpose. Thus, at the preparatory stage, a counter-statement from the defendant can be attached to criminal case files. As a result, one person simultaneously receives two procedural statuses – a private prosecutor and a defendant, and two statements are jointly considered and resolved in one proceeding. Judicial investigation becomes the stage when judicial investigative actions are carried out and documents containing information previously unknown to the parties are opened. The court assists the parties in collecting evidence, since they are private individuals and cannot independently obtain all the information they would like to present to prove their point of view as evidence, contributing to their reconciliation.

According to the Judicial Department under the Supreme Court of the Russian Federation, in 2023, the number of private prosecution criminal cases considered and resolved by a justice of the peace amounted to over 10,000, or 1.4% of the total number of criminal cases considered and resolved by a verdict or ruling to terminate a criminal case. Out of these, over 5.5 thousand criminal cases were initiated, considered, and resolved by a justice of the peace, which is 14% more than the number of private prosecution criminal cases initiated by the investigative body and received by a justice of the peace to be heard and resolved on the merits (over 4.5 thousand criminal cases).¹⁸

¹⁸ Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2023, <https://cdep.ru/index.php?id=5> (accessed on 12.03.2025).

The purpose of justice in the peace is to reconcile the parties. Such a mechanism is stipulated as terminating a criminal case by a justice of the peace when the parties reconcile. The procedure for terminating a criminal case itself meets several conditions: the victim did not only forgive the offender, but also received compensation for the damage caused; the judge has the right to review the criminal case in a court session under general conditions and pass a sentence thereon; the criminal case can be terminated only in a court session, since Article 25 of the Criminal Procedure Code of the Russian Federation is not applied to the reconciliation procedure with a justice of the peace. Reconciliation is usually understood as a criminal procedural activity between the accused and the victim that aims to overcome the consequences of the crime. Therefore, the true repentance of the guilty party and sincere forgiveness by the victim are not obligatory for terminating the case on the grounds of reconciliation. The parties' formal statement on the achieved reconciliation is sufficient to terminate the criminal case, significantly simplifying the reconciliation procedure.¹⁹

The conditions to be met during proceedings before a justice of the peace give grounds to believe that this differentiated form corresponds to proceedings in courts of first instance. The purpose and stages coincide, and the principles of criminal proceedings and general litigation conditions are observed. However, several conditions complicate the judge's work since they are not typical of his/her criminal procedural function – hearing and resolving a criminal case.

Criminal proceedings considered by jury trials have several specific features that complicate them but do not affect the overall purpose. According to the Judicial Department under the Supreme Court of the Russian Federation, in 2023, the jury trial considered and resolved approximately 900 criminal cases, which is 0.13% of the total number of criminal cases considered and resolved by a ruling to terminate a criminal case or a verdict.²⁰

Judicial investigation, the main element of the proceeding structure, has several major differences that reveal the model of proceedings in the jury trial, considering legal regulation. The procedural features of judicial investigation in such proceedings are explained by the division of competence between a professional judge and a jury, as well as a wider penetration of the principles of adversarialism, immediacy, and orality. Hearing a criminal case by a jury trial presupposes the personal perception of the defendant's standpoint, which can contribute to the defendant's repentance and reconciliation with the victim.

¹⁹ Scientific and practical guide to the application of the Criminal Procedure Code of the Russian Federation/ edited by V.M. Lebedev (Moscow: Norma, 2004).

²⁰ Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2023, <https://cdep.ru/index.php?id=5> (accessed on 12.03.2025).

An analysis of the features of criminal proceedings under the jurisdiction of a justice of the peace and those considered by the jury trial allows asserting that the model of proceedings in a court of first instance is basic for them, since the purpose of hearing and resolving a criminal case remains unshakable. The specifics of each proceeding determine the tasks.

6 Proceedings on individual categories of criminal cases

The Criminal Procedure Code of the Russian Federation unites three differentiated proceedings based on the individual categories of criminal cases: proceedings on criminal cases against minors (Chapter 50 of the Criminal Procedure Code of the Russian Federation), proceedings on involuntary treatment (Chapter 51 of the Criminal Procedure Code of the Russian Federation), proceedings on administering measures of criminal effect upon liberation from criminal responsibility (Chapter 51.1 of the Criminal Procedure Code of the Russian Federation).

Judicial proceedings on criminal cases against minors are complicated by the obligatory participation of a legal representative in the person of a parent, guardian, or trustee, or if absent – a representative of the guardianship or trusteeship authority, as well as a defense attorney; the need to involve a teacher (psychologist) for a minor under 16 years old or a minor aged 16 to 18 years old if he/she suffers from a mental disorder or is retarded in mental development; the obligation the court to be specially cautious when choosing a preventive measure in the form of detention and the presence of a special preventive measure in relation to a minor – supervision by his/her parents or other trustworthy persons; a special circumstance in proof; the right of the court to remove the minor from the courtroom when examining circumstances that may have a negative impact on the minor; the obligation of the court to consider the possible termination of the criminal case and applying a compulsory educational measure to the minor, or releasing him/her from punishment with placement in a special closed-type educational institution, or a suspended sentence, or sentencing not associated with imprisonment; focus is made on the minor' conscience of guilt and reconciliation with the victim.

We should pay attention to the organizational features of justice concerning minors in the form of ensuring the specialization of judges, which requires their professional competence, training, and retraining not only in matters of law, but also in pedagogy, sociology, adolescent psychology, criminology, victimology, as well as the use of juvenile reconciliation technologies. The most desirable final ruling, due to its maximum humaneness, as well as educational and conciliatory nature, is the judgment to terminate the criminal case and transfer the minor to the supervision of parents or persons replacing them (relatives, guardians), or a

specialized state body, restrict leisure and set special behavioral requirements as compulsory educational measures.

According to statistics, compulsory educational measures were applied to minors in 2023 in approximately 1,777 criminal cases, which is 8.6% of the total number of criminal cases against minors.²¹

Although proceedings concerning minors are complicated, their application is justified, since it gives additional guarantees that the rights of a minor defendant will be observed. At the same time, the right of the court to apply educational measures instead of criminal punishment contributes to conciliation procedures and reformation. The specifics of the proceedings associated with its humanization can prevent a negative impact on the minor while maintaining the purpose of the proceedings of hearing and resolving a criminal case on the merits.

The state is forced to isolate persons suffering from a mental disorder or those who developed it after committing a crime, as well as to apply involuntary treatment thereto. In 2023, compulsory measures of a medical nature were applied to about 8,019 persons.²²

What is the specificity of such an accusation? We cannot discuss its absence, since a statutorily prohibited act was committed. However, the person who committed it does not meet the requirements imposed on the subject of the crime stipulated by the Criminal Code of the Russian Federation. These circumstances allow the affirmation of a specific accusation. The Greek prefix *para-*, retains its basic meanings as a term element (location, positioning near, close to, next to something; derogation, deviation from something)²³ to characterize the accusation in this type of proceedings, which we believe should be called a *para-accusatory thesis* formulated at the stage of pre-trial proceedings and presented by the prosecutor in the proceedings of a court of first instance.

The main features of this type of proceedings relate to judicial investigation, as the subject of proof is extensive. The court has to substantiate additional facts: whether the criminal act was committed by a person in a state of insanity; whether the person developed a mental disorder after committing the crime that renders impossible to impose or execute a sentence; whether the person's mental disorder poses a threat to him/ her or others; whether a compulsory measure of medical nature should be applied and which one.

Since the additional circumstances surrounding the subject of proof are related to the person's mental state, the court should carefully examine the

²¹ Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2023, <https://cdep.ru/index.php?id=5> (accessed on 12.03.2025).

²² *Id.*

²³ The semantic meaning of the prefix *para-* in Latin, Proceedings of the scientific and practical conference of young scientists of MGLU, May 25 2010 (Minsk: MGLU, 2010).

report of the forensic psychiatric examination appointed and conducted during the preliminary investigation. The remaining stages of the proceedings do not differ from ordinary criminal proceedings. Since the person subject to involuntary treatment proceedings is a whole party thereto, he/she should be granted the right to personally exercise his/her procedural rights.

The final stage of the proceedings is awarding the final judgment that resolves the criminal case on the merits. In addition to the expected judgment in the form of a ruling on liberation from criminal responsibility or punishment and on involuntary treatment, the court has the right to make one of three rulings in these proceedings: to terminate the criminal case and refuse to apply compulsory measures of a medical nature if it is established that the person does not pose a threat due to his/her mental state or he/she has committed an act of minor gravity; to terminate the criminal case if there are general grounds for terminating the criminal case established by criminal procedure law; to send the criminal case back to the prosecutor – if it is established that the person does not have any mental disorder and criminal punishment can be applied thereto.

Proceedings on administering measures of criminal effect upon liberation from criminal responsibility are conducted against a person who has committed a minor or medium gravity for the first time and has reconciled with the victim in the form of indemnification or otherwise undid the harm caused by the crime. The establishment of this institution in 2016 indicates its active use. According to the Judicial Department under the Supreme Court of the Russian Federation, in 2023, over 36,000 criminal cases were terminated with the imposition of a judicial penalty, which amounted to 22% of the total number of terminated criminal cases for reasons other than exoneration.²⁴

A judicial penalty is a monetary penalty imposed by the court when a person is liberated from criminal responsibility, subject to certain conditions (Article 104.4 of the Criminal Code of the Russian Federation). Therefore, because of its general sense, the proceedings on administering measures of criminal effect upon liberation from criminal responsibility are the liberation of a person from criminal responsibility by setting a judicial penalty.

The purpose of proceedings in this category of criminal cases remains the same as in the court of first instance – hearing and resolving a criminal case on the merits. The objectives of the proceedings are somewhat transformed, taking into account the conditions to be met, including: the person commits a crime for the first time; the crime is classified as minor or medium; the person voluntarily

²⁴ Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2023, <https://cdep.ru/index.php?id=5> (accessed on 12.03.2025).

compensated the damage or otherwise undid the harm caused. Given that the provisions of Article 25.1 of the Criminal Procedure Code of the Russian Federation stipulate two procedural options for terminating a case with the imposition of a judicial penalty (upon the investigator's motion and on the initiative of the court), the structure of this proceeding may differ from the structure of the proceeding in courts of first instance. However, the general model of proceedings in courts of first instance remains (Part 2 of Article 446.1 of the Criminal Procedure Code of the Russian Federation).

The considered institution exists along with the existing institutions for terminating a criminal case that do not entail financial costs for the defendant but provide for obligatory conditions in the form of reconciliation of the parties (Article 25 of the Criminal Procedure Code of the Russian Federation), repentance of the person (Article 28 of the Criminal Procedure Code of the Russian Federation), compensation for damages (28.1 of the Criminal Procedure Code of the Russian Federation).

Since the legislation does not indicate conciliation procedures or the consent of the prosecutor and victim as obligatory conditions for the court to apply this procedure, the court should not consider these conditions when making a judgment. This distinguishes this institution from the institution of terminating a criminal case due to the reconciliation of the parties. However, judicial practice indicates the active behavior of a person concerning conciliation procedures. The court evaluates the sufficiency of the measures taken by the accused to compensate for damage or undo the harm to recognize the statutory conditions as met.²⁵

The sufficiency or insufficiency of the person's voluntary actions to compensate for damage or otherwise undo the harm caused by a crime is controversial in judicial practice. An analysis of law enforcement practice has shown that if there is a victim in a criminal case, he/she is compensated for material and moral damage in monetary form. In case harm is caused to the interests of society and the state, it is undone through the admission of guilt, active contribution to the preliminary investigation, consistent confessions, voluntarily handing over prohibited items and splitting up accomplices, taking charitable actions in the form of financial assistance to institutions, and voluntarily performing community service. Notably, the final judgment on the sufficiency of actions to minimize the nature and degree of public threat posed by the committed act and neutralize its harmful consequences

²⁵ Review of the judicial practice of liberation from criminal responsibility with the imposition of a judicial penalty (Article 76.2 of the Criminal Code of the Russian Federation) (approved by the Presidium of the Supreme Court of the Russian Federation on 10.07.2019), <https://www.garant.ru/products/ipo/prime/doc/72196202/> (accessed on 12.03.2025).

remains with the court, which bases such a judgment on its inner conviction on the sufficiency of conciliation procedures.

The Supreme Court of the Russian Federation, explaining the concepts of damage and compensation for harm, notes that harm can be compensated in kind – by providing property to replace the lost one, repairing, or correcting damaged property, in monetary form – by reimbursing the cost of lost or damaged property, or medical expenses. Harm can be compensated through property, including monetary, compensation for moral damage, providing any assistance to the victim, making an apology, as well as taking other measures aimed at restoring the victim's rights violated by the crime, the legitimate interests of the individual, society, and the state, which are legal in nature and do not infringe on third party rights (clause 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 27.06.2013 # 19).²⁶

The Constitutional Court of the Russian Federation supports this approach and notes that since various criminally punishable acts entail the occurrence of harm of a different nature, the actions provided for in Article 76.2 of the Criminal Code of the Russian Federation aimed at mitigating such harm and indicating a decrease in the public danger of the crime, as well as the neutralization of its harmful consequences, cannot be identical in all cases and are determined depending on the characteristics of a specific act. At the same time, the Constitution of the Russian Federation does not imply the obligation of the federal legislator to enshrine identical criteria for liberation from criminal responsibility of persons who have committed a minor or medium crime for the first time, ignoring the circumstances that indicate that the person reduced the degree of public danger of the committed crime through his/her actions. The legislator has the right – to achieve the objectives of the criminal law – to authorize the court to decide whether the actions taken by the perpetrator in each specific case are sufficient to consider the reduction in the public danger of the act as a basis for liberating him/her from criminal responsibility.²⁷

These proceedings have a distinctive feature at the judgment stage. The essence of the institution of liberation from criminal responsibility with imposing a judicial penalty is associated with a compromise judgment of the court on behalf of

²⁶ On the court application of legislation regulating the grounds and procedure for liberation from criminal responsibility: Resolution of the Plenum of the Supreme Court of the Russian Federation of 27.06.2013 # 19 (as amended on 29.11.2016), http://www.consultant.ru/document/cons_doc_LAW_148355/ (accessed on 09.03.2025).

²⁷ On the refusal to hear the complaint of citizen Roman Nikolaevich Villisov regarding the violation of his constitutional rights by part one, Article 25.1 of the Criminal Procedure Code of the Russian Federation and Article 76.2 of the Criminal Code of the Russian Federation: Ruling of the Constitutional Court of the Russian Federation of 26.03.2019 # 650-O, <https://ukrfkod.ru/pract/opredelenie-konstitutsionnog-suda-rf-ot-26032019-n-650-o/> (accessed on 12.03.2025).

the state in the form of resolving a criminal dispute through financial recovery and liberation from criminal responsibility of a person in response to his/her voluntary actions to compensate for the damage or otherwise undo the harm caused by the crime.

Thus, in the case of special proceedings, the defendant should admit his/her guilt, while the victim and the prosecutor should consent to the special proceedings, unlike in the considered proceedings. However, one cannot rule out the possibility that all these conditions may coincide, and special proceedings can be applied to terminate a criminal case with the imposition of a judicial penalty. The essence of the final court judgment in this case will be somewhat different: the defendant's guilt will be proven by his/her confession, the public interest will be satisfied, since the state prosecutor consented thereto, the private interest will be also satisfied, since the victim reconciled with the defendant and received material compensation for the harm caused to him/her by the crime.

7 Proceedings concerning certain categories of persons

Differentiated proceedings with specifics in criminal cases against certain categories of persons (Chapter 52 of the Criminal Procedure Code of the Russian Federation) both belong to the group of the above-mentioned proceedings, since they are especially subjective, and are special, since they are applied against persons with official immunity.

These proceedings provide additional legal safeguards for the independence and autonomy of officials exercising state and public functions. Notably, the list of such persons has changed throughout the validity of the criminal procedure law. Currently, it includes persons who can be combined into six groups: 1) the President of the Russian Federation who has ceased to be in office, a candidate for Presidency of the Russian Federation; 2) the Commissioner for Human Rights in the Russian Federation; 3) deputies of elected state bodies and registered candidates; 4) judges; 5) officials of law enforcement and regulatory agencies, lawyers; 6) members of election commissions.

The specifics of proceedings in relation to this category of persons concern the entire criminal procedure (initiation of a criminal case, detention and remand in custody, taking procedural actions that restrict the individual's constitutional rights and freedoms).

The specifics of court proceedings include:

1) jurisdiction of criminal cases in relation to a limited circle of persons, selected from the general list: a member of the Federation Council and the State Duma, justices of the peace and federal judges. These persons have the right to

file a motion for the court to hear a criminal case against them at the level of the RF constituent entity;

2) when the court receives a criminal case, the judge clarifies general issues to schedule a court hearing and focuses on compliance with several statutory rules: whether the criminal case was initiated against a specific person by that authorized official and according to the statutory procedure; whether the relevant state body consented to initiate a criminal case against this person, as provided for by criminal law; whether the rules for taking investigative actions, choosing a preventive measure, bringing the defendant into custody, and the procedure for remanding the criminal case to court have been observed. Otherwise, proceedings in the court of first instance are carried out according to their general model, pursuing a common purpose of hearing and resolving a criminal case on the merits;

3) the execution of a restraining order in the form of detention during the trial is complicated since the judgment to choose detention concerning judges of the Constitutional Court of the Russian Federation is executed with the consent of the Constitutional Court of the Russian Federation, and judges of other courts – with the consent of the qualification board of judges. The judgment to detain a member of the Federation Council, a deputy of the State Duma, the President of the Russian Federation who has ceased to exercise his powers, or the Commissioner for Human Rights in the Russian Federation is executed with the consent of the Federation Council or the State Duma, respectively.

The scientific literature expresses that this procedure is not a personal privilege but is intended to ensure public interests since these persons perform state functions and carry out unimpeded legal activities independently and autonomously.²⁸

Thus, all four proceedings aimed at hearing and resolving a criminal case are complicated by the following features: in the first case – by the age of the person who committed the crime; in the second – by the illness of the person and the state's humanist attitude toward such person expressed in involuntary treatment instead of serving a sentence; in the third – since a crime of minor or medium severity was committed by the person for the first time and the person compensated for damage or otherwise undid the harm caused by the crime, in the fourth – by the official immunity of the person. However, all these proceedings achieve the purpose of hearing and resolving a criminal case on the merits, based on the model of proceedings in courts of first instance, which confirms their unity. At the same time, the specific features differentiate their criminal procedural form.

²⁸ GRIGORIEV K.A. Features of criminal proceedings against prosecutors, investigators and lawyers; thesis of the Candidate of Legal Sciences (Moscow, 2006).

Conclusion

The type of differentiated proceedings used by courts of first instance to hear and resolve criminal cases is determined based on the conditions of each case.

Each type of proceeding has been presented for some reason. Some are related to simplification, acceleration, and, consequently, reduction of the terms of legal proceedings. Others appeared to encourage persons who cooperate with the state or have compensated for damage or otherwise undid the harm caused by the crime. Still, others were revived after being lost in the Soviet period because of reforms to the judicial system. Several proceedings have been presented due to the specific features of the subject brought to criminal responsibility.

The trend of diversifying simplified and complicated proceedings is associated with state criminal policy. It depends on historical periods when different values, principles, and conditions were inherent in the criminal procedural form. The diversity of differentiated proceedings considers the defendants' intention to reconcile and undo the damage caused by the crime. The need to differentiate the criminal procedural form is obvious while maintaining the unity of the proceeding model. We believe it is necessary to systematize all the specific features of proceedings, including those related to the reconciliation of the parties, accompanied by their generalization in a special section of the criminal procedural law, as well as to grant the court discretionary powers to converge various types of proceedings in a single legal case.

Resumo: O presente artigo tem como objeto o estudo do instituto da conciliação no âmbito do processo penal perante os tribunais de primeira instância da Federação Russa. A pesquisa propõe-se a analisar as especificidades da conciliação como mecanismo de resolução de conflitos penais no contexto da justiça de primeira instância. Para tanto, a autora empregou distintos métodos de investigação, notadamente a análise jurídico-formal, o método comparativo e uma abordagem sistêmica. A utilização da análise jurídico-formal permitiu delimitar os procedimentos especiais para a prolação de sentença judicial conforme disciplinado pelo Código de Processo Penal da Federação Russa. A análise jurídico-comparativa possibilitou identificar as particularidades do instituto da conciliação no processo penal, evidenciando suas diferenças substanciais em relação aos procedimentos conciliatórios previstos no processo civil e na arbitragem. A adoção de uma abordagem sistêmica na análise dessas características permitiu considerar a conciliação como elemento integrante do conjunto de medidas especiais disponíveis ao juízo de primeira instância no processo penal. Conclui-se que a diferenciação da forma processual penal contribui para a preservação das garantias processuais essenciais à consecução dos objetivos do processo penal, ao mesmo tempo em que assegura sua coesão e unidade. Defende-se que todas as peculiaridades procedimentais da conciliação sejam devidamente sistematizadas e incorporadas em seção específica da legislação processual penal. Ademais, propõe-se que ao magistrado sejam conferidos poderes discricionários para integrar, de forma razoável, diferentes institutos e mecanismos no âmbito de um mesmo processo.

Palavras-chave: Procedimentos de conciliação. Processos diferenciados. Tribunal de primeira instância. Processo penal. Caso criminal.

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