Revista Brasileira de
Alternative Dispute Resolution

RBADR

07

Ano 04 · Número 07
Jan./Jun. 2022

Publicação Semestral
ISSN: 2596-3201

Presidente
Gustavo da Rocha Schmidt

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CBMA | CENTRO BRASILEIRO DE MEDIAÇÃO E ARBITRAGEM

30 anos

FORUM

ano 04 - n. 07 | janeiro/junho - 2022
Belo Horizonte | p. 1-260 | ISSN 2596-3201
R. Bras. Al. Dis. Res. – RBADR

Revista Brasileira de *ALTERNATIVE DISPUTE RESOLUTION*

RBADR

FORUM
CONHECIMENTO JURÍDICO

REVISTA BRASILEIRA DE *ALTERNATIVE DISPUTE RESOLUTION* – RBADR

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Impressa no Brasil / Printed in Brazil / Distribuída em todo o Território Nacional

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Este periódico está indexado no Scopus, da Elsevier.

R454 Revista Brasileira de Alternative Dispute Resolution - RBADR. – ano 1, n. 1 (jan./jun. 2019) –.– Belo Horizonte: Fórum, 2019-.

Semestral; 17cm x 24cm

ISSN impresso 2596-3201
ISSN digital 2674-8835

1. Direito. 2. Direito Processual Civil. 3. Direito Civil. I. Fórum.

CDD: 341.46
CDU: 347.9

DOI: 10.52028/rbadr.v4i7.15

Conditions for conclusion an agreement in criminal proceedings with the participation of the victim's representative

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Abstract: The main task of this article is to study the essence and purpose of the institute of criminal proceedings "conclusion of an agreement in criminal proceedings", to reveal the application of this institute of criminal proceedings in practice, to determine its role in legal and social life and to study the conditions of conclusion of the above agreement for a peaceful resolution of the dispute between parties. Among the methods by which the problem of the given topic is studied it is possible to distinguish a dialectic method, comparative-legal, system method, historical-legal, formal-legal method,

method of analysis and synthesis. The authors studied the experience of foreign countries in combating corruption and proposed to introduce international experience in the national legislation for successful experience of entering into agreements in criminal proceedings, as well as for the effectiveness of these agreements and maximum compliance with the rights of the parties of the disputes. The study describes the current state of legal acts regulating the conclusion of agreements, the concept of agreements in criminal proceedings and their types and the main reasons for the conclusion of agreements, the terms of the agreement between the parties to criminal proceedings as a wat for a peaceful resolution of disputes, the stages and elements of the conclusion of agreements. The participation of the victim in the process of concluding the agreement was also investigated. On the example of international experience of development and application of this institute the establishment of the institute and its further development, as well as the conditions of conclusion of the agreement in such states are investigated.

Keywords: Agreement on reconciliation; representative; media; reconciliation; revial of justice

Summary: **1** Introduction – **2** Materials and Methods – **3** Results and Discussion – **4** Conclusions – References

1 Introduction

Improvement of the legal system of Ukraine, the democracy explosion, Ukraine's approach to European integration require the adoption of effective reforms and improvement of the legislative base. In order to achieve the above results, a number of reforms are being adopted in Ukraine, including the reform of the Criminal Procedure Code of Ukraine,[1] which in turn includes changes and innovations in criminal proceedings. It is the approach of Ukraine to European integration that demands from our state adaptation of national legislation to international legislation and international standards. Special attention is paid to criminal proceedings, since it is during the criminal proceedings that the protection of constitutional rights and freedoms of the person and citizen takes place.

The agreement in criminal proceedings in Ukraine is the embodiment of restorative justice, so-called restorative justice. Restorative justice has become one of the major causes of the development of justice in the world, in the form in which it is currently available. The result of the application of restorative justice may be the conclusion of an agreement on reconciliation, which will satisfy the interests of the victim, as well as the interests of the suspect or accused in the conduct of illegal acts.[2] The latest international concept of human rights protection shows that most states refuse only from the punitive methods of counteracting criminal acts, because exclusively punitive methods cannot fully protect both the

[1] Criminal Procedure Code of Ukraine, 2012.
[2] TURNER, 2017.

rights of the victim and the rights of the suspect or accused.[3] That is why this has led to the emergence of a new approach to criminal proceedings, that is, the creation of the concept of restorative justice, which is realized through the conclusion of agreements in criminal proceedings.[4]

The history of restorative justice in Ukraine begins in 2003. Because it was the year that the development of practice of realization of restorative justice by public organizations began. First, the Ukrainian Center of Understanding on the basis of Darnytskiy District Court, and then other organizations that joined the movement for the restoration justice in both Kyiv and the regions of Ukraine. Among such organizations it is possible to distinguish: "Faith in the future" (Ivano-Frankivsk), Branch of the All-Ukrainian Foundation "Protection of Children's Rights" (Bila Tserkva), the Regional Development Agency "Harmony" (Chervonohvardiiskyi District, AR Crimea), the Lviv Charitable Foundation "Space without conflict", etc. The Resolution of the United Nations Economic and Social Council of 24 July 2002 on the basic principles of application of the programs of restorative justice was aimed at achieving the result of the above mentioned above. The importance of the recovery process is that any process involving the victim, suspect or accused or other persons affected by the unlawful act of the guilty party shall be jointly involved in the resolution of the conflict[5]. The most common types of restorative justice in the world are media, community justice or decision making, as well as conferences.[6]

The agreement on reconciliation between the victim and the suspect or accused, since its adoption at the legislative level, has gained important practical significance for the conduct of judicial proceedings in Ukraine. Since the inclusion of these agreements into the Criminal Procedure Code of Ukraine),[7] a positive result has been recorded in their application. From the statistical data, it is seen that for a month almost 3000 agreements are concluded, which are approved by the court, but the number of rejected transactions varies from 70 to 250 every month and has a slight tendency to increase. However, despite the positive dynamics of the conclusion of the agreements, this institute of criminal proceedings is a new mechanism of its application not yet fully investigated by scientists and not worked out by court practice. It is expedient to continue its improvement drawing attention to the appearance of all new formulas and approaches to the development of this institute.[8]

The purpose of this article is to systematically and in detail study on the basis of the national and international legislation of the institute of criminal proceedings.

3 SOFIEV, 2019, p. 230-236.
4 DUBOVYK, 2015, p. 2-4.
5 SEVERO, 2020, p. 67-82.
6 MINIX, 2017, p. 551-606.
7 Criminal Procedure Code of Ukraine, 2012.
8 Generation of the High …, 2014.

There are conclusion of agreements in criminal proceedings, namely definition of the concept of agreement between the parties during criminal proceedings, conditions and the order of conclusion of the agreement between the parties, and consequences of non-fulfillment of this agreement. This article will cover the participation of the victim during the conclusion of the reconciliation agreement and its legal and procedural status.

2 Materials and Methods

The methodological tools of the research of this topic are based on fundamental, general scientific and special methods. Among the methods by which the research of this topic is carried out, it is possible to distinguish logical-semantics method and method of convergence from abstract to concrete. With the help of which the study and deepening of the intelligible apparatus is carried out. The dialectic method allows to determine the grounds, contents and order of conclusion of agreements during criminal proceedings, and also investigates the consequences of conclusion of this agreement and its non-fulfillment. The structural-logical method is used to clarify the procedure, grounds and conditions of conclusion of an agreement with the participation of the parties in criminal proceedings. This method is also used to clarify the main controversial issues of application of agreements in domestic and international criminal-procedural legislation. The semantics method, the main purpose of which is to delimit the concepts and terms to be used in this work, as well as to analyze the meaning of the criminal-legal categories. The formal-legal method of research, which is used in determining the role of participants (parties) of conclusion of an agreement in criminal proceedings.

Also among the methods by which the conclusion of an agreement in criminal proceedings with the participation of the victim's representative can be distinguished comparative-legal method. It allows to study the peculiarities of conclusion of an agreement between the parties of criminal proceedings in different legal systems and also determine forms of conclusion of agreements in criminal proceedings in different countries of the world. The historical-legal method is used for the study of the establishment and development of this institute of criminal proceedings, its adoption in Ukraine, as well as international experience of concluding agreements between parties of criminal proceedings.

Effective methods of investigation of conditions of conclusion of agreements in criminal proceedings should also be considered an axiomatics method. The task of which is to build scientific theory, at which some statements (axioms) are accepted without proofs and then used for reception of rest of knowledge under certain logical rules. The method of analogy, which provides knowledge about subjects and phenomena on the basis that they are similar to others, that is, it

can be argued that this method is aimed at analysis of conclusion of agreements and comparison of them with international conditions of conclusion of agreements in criminal proceedings. The formalization method that reflects the content of knowledge in the known symbolic content.

The hermeneutical method of research is used to reveal the essence of the concept of "an agreement in criminal proceedings" and the possibility of its realization in practice and the structural-functional method used to define the legal features of the conclusion of the agreement and to provide such an agreement of characteristics and features.

Also among the methods by which the regulation of anti-corruption activity is carried out. It is possible to distinguish a formal-legal method. The purpose of which is research and development of the content of norms of domestic legislation, which in turn constitutes the normative basis of application of provisions on conclusion of agreements in criminal proceedings. Also, the purpose of which is research of all means of grammar, logical, systematic and axiologic interpretation of the content of legal norms aimed at improving the institute of criminal proceedings – conclusion of agreements.

On the basis of the sociological method, the position of practical workers (lawyers, judges and prosecutors) regarding their attitude to the resolution of conflicts in criminal proceedings through the conclusion of an agreement on reconciliation has been studied, and the position on the solution of controversial issues related to criminal proceedings on the basis of the agreement has been investigated. Using the statistical method, the general research is carried out with the help of the sociological method.

3 Results and Discussion

The process of humanization and democratization in Ukraine has led to qualitative and positive updating of criminal-procedural legislation, in particular, a new way of resolving criminal conflicts has emerged. The conflict between the parties to criminal proceedings can be resolved due to the emergence of agreements in criminal proceedings, if the crime committed by the guilty person is not a major social danger. The development of an agreement in criminal proceedings is conditional on the following historical periods:

1. Pre-revolutionary period. The pre-revolutionary law of the conclusion of an agreement between the parties was possible in cases that were violated solely by a complaint of the victim, but for cases of private-public and private charges.
2. Soviet period. The Soviet legislation regulated the conclusion of agreements between the parties on cases of exclusively private prosecution, and the

conclusion of the agreement accordingly was possible only if the crime by the guilty person was committed for the first time. Such a provision artificially limited the application of such a method of reconciliation between the parties and the closure of the criminal case accordingly.

3. Modern period. In the modern legislation regulating the institute of conclusion of an agreement between the parties of criminal proceedings, the conclusion of the agreement is possible before the court enters the room of the conference, which is different from the pre-revolutionary and Soviet period, where the corresponding agreement could be concluded only before bringing a law into effect.

Criminal Procedure Code of Ukraine[9] regulates the activities related to the conclusion of agreements in criminal proceedings. This institute regulates two types of agreements:

1) an agreement on reconciliation between the victim and the suspect or accused;
2) an agreement between the prosecutor and the suspect or accused of recognizing the accused.

The first type of agreement will be considered in this regard, as it is directly connected with the victim's person and thus with the victim's representative, whose main task is to protect the victim's interests.

During the adoption of Chapter 35 Criminal Procedure Code of Ukraine,[10] a significant measure was planned to simplify the resolution of criminal conflicts, to speed up the procedure for the consideration of certain categories of cases, to reduce the length of detention, to reduce the burden on law enforcement and judicial bodies, to grant the parties a right to resolve the issue of dismissal of a person from criminal responsibility.

Most of the practical workers, lawyers, investigators, judges, are positively involved in the practice of conflict resolution through agreements. The survey, which was conducted among the employees directly involved in the administration of justice, showed that 93.72% of the court employees consider the conflict resolution to be positive by the institution, 83.15% of the investigators and 76.90% of lawyers follow the same view.[11]

The establishment of the institute of "conclusion of agreements in criminal proceedings" was also due to the adoption of recommendations, which are fixed in international legal acts. There are Recommendation No. 6 R (87) 18 of the

[9] Criminal Procedure Code of Ukraine, 2012.
[10] Criminal Procedure Code of Ukraine, 2012.
[11] TSILMAK; SCRIABIN, 2012, p. 155-163

Committee of Ministers to member states concerning the simplification of criminal justice,[12] Council Framework Decision on the standing of victims in criminal proceedings[13] and Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters.[14]

In Ukraine, the practice of the European Court of Human Rights is taken into account during the administration of justice.[15] The Criminal Procedure Code of Ukraine[16] states that in Ukraine criminal proceedings are carried out taking into account the practice of the ECHR, i.e., during criminal proceedings the practice of the European Court of Human Rights should be applied and taken into account. The importance of the European Court of Human Rights decisions is confirmed by Law of Ukraine No. 3477-IV "on the implementation of decisions and application of the case law of the European Court of Human Rights".[17] It is mandatory to implement decisions concerning Ukraine, as well as to adopt European standards in the course of justice in Ukraine for the full and comprehensive protection of human rights.

An agreement on reconciliation is an institution of criminal proceedings. The main purpose of which is a voluntary agreement between the victim and the suspect or accused. The content of which is to agree on the terms of responsibility of the suspect or accused in the event of his unlawful actions aimed at causing harm to the victim, and in connection with what compensation of such damage and renewal of rights of the victim.[18] Among the signs of the agreements on reconciliation in criminal proceedings, R. V. Novak[19] proposes to divide all features into socio-psychological and procedural. The socio-psychological features of the agreement on reconciliation can be attributed to confidentiality, voluntary, protection, compensation, self-determination. The Novak's procedural features include accessibility, unloading of the judicial system, optimization of criminal proceedings.

An agreement on reconciliation between the parties to criminal proceedings may be concluded with respect to criminal offenses, crimes of a minor or moderate severity and criminal proceedings, which are carried out in the form of private prosecution.[20] The question arises as to the legality of the principle of dispositivity, so the victim voluntarily intends to conclude an agreement on reconciliation with the person who has committed a serious or especially serious crime, but according

[12] Recommendation No. 6 R (87) 18 ..., 1987.
[13] Council Framework Decision ..., 2001.
[14] Recommendation No. R (99) 19 ..., 1999.
[15] ROZUMOVSKYI, 2022.
[16] Criminal Procedure Code of Ukraine, 2012.
[17] Law of Ukraine No. 3477-IV ..., 2006.
[18] BELENOK, 2021.
[19] NOVAK, 2015.
[20] HLADII, 2021.

to the current legislation does not have the right to this. The essence of this provision lies in the fact that serious and especially serious crimes constitute a special increased danger for society and public order, so the conclusion of the corresponding agreements according to the law is not allowed.

To conclude an agreement on reconciliation during criminal proceedings, there are several conditions, among which are:

1. Volt. The main purpose of this condition of conclusion of the agreement in criminal proceedings is that the parties to the conflict, on their own will, voluntarily, without any pressure or violence, conclude this agreement.
2. Subjective. The offense committed by the suspect or accused should relate to private (property or personal) interests of the victim, physical or legal, and in no way relate to the state and communal enterprise or institution.
3. Compensation. This agreement is intended to ensure that the suspect or accused fully indemnified the damage to the victim, as well as restore his violated rights.
4. Category. An agreement on reconciliation between the victim, suspect or accused during criminal proceedings may be concluded in cases involving minor or moderate offenses, criminal offenses and criminal proceedings in the form of private charges.
5. Temporal. The initiation of an agreement on reconciliation can take place at any time, after the person who has committed an unlawful act has been informed of suspicion, before the court is brought to the meeting room for pronouncement court sentence.

The following elements should be included in the agreement on reconciliation between the parties to criminal proceedings:

1. Parties to the agreement. The agreement on reconciliation shall specify the party's name, surname, name, patronymic, date and place of birth, place of residence, citizenship, taxpayer identification number, code from the Unified State Register of individuals. There entrepreneurs and legal entities for legal entities. Failure to sign the parties to the conciliation agreement may result in the court's refusal to sign the agreement.
2. Formulation of suspicion or accusation and its legal qualification. This element of the agreement includes information about the time and place of the unlawful act and other circumstances that may be involved in the act. It is not possible to consider the true and correct agreement, i.e. to conclude an agreement in which the information is absent, and in which there will be no formulation of suspicion or accusation and will not indicate the legal qualification of the actions of the guilty person.

3. Significant for criminal proceedings. Such significant circumstances may include the presence of a person who has committed an unlawful act and who is a party to the case, the presence of an unheard or unredeemed conviction or the presence of an uncommitted penalty in such person, and also the possibility of postcriminal behavior, cooperation with the investigation and other circumstances, which play an important role in the conclusion of the agreement.
4. The amount of damage to the injured person caused by the unlawful act and the period of its compensation. In the agreement on reconciliation of the mark, which is compensated to the victim and in what size. If the agreement specifies material damage, it should be clearly stated, in whole or in part, in which order and in what time it should be reimbursed to the suspect or accused.
5. Approval of punishment for the consent of the parties to his appointment. The agreement on reconciliation must be signed by the parties.
6. Consequences of the agreement on reconciliation between the parties of criminal proceedings. The parties to the criminal proceedings in the agreement on reconciliation with their signatures testify that they are acquainted with the consequences of the conclusion of the respective agreement.
7. Consequences of non-fulfillment of the agreement. The main consequence of non-implementation of the agreement on reconciliation is the cancellation of the court decision, which was approved by the given agreement and in this case the person who does not fulfill such agreement may be criminally liable. In accordance with the practice of the High specialized Court of Civil and Criminal cases, it would be appropriate to familiarize the suspect or accused with the liability that occurs in the case of non-fulfillment of the reconciliation agreement.[21]

The conclusion of an agreement on reconciliation between the parties to criminal proceedings can be divided into four stages:

1) the stage of initiation of the agreement on reconciliation between the parties;
2) the stage of preparation of the agreement for conclusion and directly the process of conclusion of the agreement;
3) the stage of approval of such an agreement by the court;
4) the stage of implementation of the reconciliation agreement.

During the first stage of the conclusion of a deal, the parties initiated the process, namely, the victim, the suspect or the accused. At this stage, the will of the parties to conclude the agreement should be voluntary, that is, there should be

[21] Generalization of the High ..., 2014.

no pressure or violence from the third party. The second stage of the conclusion of a deal includes a certain list of actions of the parties to criminal proceedings, which are entitled to participate in this procedure of reconciliation of persons on the basis of the agreement, and includes discussion of the contents of the reconciliation agreement and other actions directly related to the future reconciliation agreement. Negotiations on the conclusion of the agreement, at this stage, have the right both to the parties of the proceeding, and their legal representatives or defenders and other persons, except the prosecutor, investigator or judge. The third stage of the agreement on reconciliation is characterized by the court's decision, which approves the agreement and appoints the appropriate measure of punishment to the person who has committed unlawful acts. The last stage of the agreement on reconciliation between the parties to criminal proceedings is the implementation of the agreement. In case of failure to comply with such an agreement, the victim and the prosecutor may appeal to the court demanding the cancellation of the decision, and persons who do not comply with the agreement may be prosecuted.

In criminal proceedings, the investigator or the prosecutor are obliged to notify the victim, suspect or accused of their rights to conclude an agreement on reconciliation, as well as to ensure the realization of the right and to obstruct the conclusion of an agreement on reconciliation between the parties to criminal proceedings. One of the features of the reconciliation agreement is that the judge is obliged to make sure that the suspect or accused is able to fulfill the obligations he has undertaken, as specified in the agreement on reconciliation, that is, whether he has a material possibility of compensation for damage to the victim or to perform any other actions specified in the agreement on reconciliation.

The agreement on reconciliation is not a unilateral expression of will by one of the parties to the proceedings, but a mutual decision by both parties to the proceedings aimed at peaceful resolution of the conflict between them, i.e., the initiators of the agreement may be either the victim or the suspect or accused. The agreement on the conclusion of the agreement on reconciliation can be made by the victim, suspect or accused, and by the representative or defender of the victim or other person chosen by the parties to the proceedings, the so-called media.[22]

Neither the judge, the prosecutor or the investigator can participate in the negotiation of the agreement on reconciliation. However, there are authors who follow a different point of view, in particular, O. O. Dudorov believes that the agreement on reconciliation can be initiated by law enforcement agencies.[23] D. Lupeco[24] argues that the failure of the prosecutor to include a criminal prosecutor in the reconciliation agreement is a mistake, since the prosecutor, both during

[22] TURMAN, 2017, p. 273-277.
[23] LYASH; KUBRAK, 2017, p. 153-157.
[24] LUPECO, 2012, p. 21-25.

the pre-trial investigation and during the trial itself, has all the necessary powers, which can contribute to a more effective process of reconciliation between the parties to the proceedings. However, it is difficult to agree with this opinion, since the provision on prohibition of initiation of agreement on reconciliation between judges, prosecutors and investigators is aimed primarily at counteracting abuse of these officials by the authorities and counteracting any acts of corruption in connection with the conclusion of agreements on reconciliation. The judge, as one of the key person in the criminal proceedings, shall not be entitled to initiate or participate in any way during the agreement of the parties on the conclusion of the agreement, since its main obligations are to settle the case on the merits and make a legal decision, however, regardless of whether a conciliation agreement is concluded, during pre-trial proceedings or directly before the court, the judge is obliged to check whether the agreement was concluded without threat or any violence or other circumstances than those provided for in the agreement.

According to the Criminal Procedure Code of Ukraine,[25] the representative in criminal proceedings is a person who has the right to be a defender. A representative of a legal entity that acts in criminal proceedings of the victim may be the head of a legal entity or another person who is authorized by law or the statutory documents of such legal entity, as well as an employee of a legal entity for a trust, as well as a person who has the right to be a defender in criminal proceedings.

According to Decree of the Plenum of the Higher Specialized Court of Ukraine on Civil and Criminal cases No. 13 On practice of carrying out by courts of criminal proceedings on the basis of agreements",[26] the agreement on reconciliation can be concluded with a legal entity, if it is a victim, regardless of its organizational and legal form, provided that such legal entity as the injured party, the actions of the suspect or accused were caused by property damage. A representative of a legal entity (the head of a legal entity, another person authorized by law or by statutory documents, an employee of a legal entity on the order of the head of a legal entity for the power of attorney for representation, and a person who has the right to be a defender in criminal proceedings, in accordance with the agreement concluded with it for representation) may represent the interests of such legal entity. During criminal proceedings, documents confirming the authority of the relevant person to represent the interests of the legal person as the injured party, as well as in the agreement on reconciliation and in the court decision are obligatory when referring to the representative of the legal entity which confirms the legality of certain actions on behalf of such a legal entity.

[25] Criminal Procedure Code of Ukraine, 2012.
[26] Decree of the Plenum ..., 2015.

An agreement on reconciliation in criminal proceedings shall also be entered into if an infant is a party or one of the parties. In this case, the relevant agreement will be concluded with the participation of a legal representative or a defender of an infant. If a minor who is a party to the proceedings has reached 16 years, he/she may enter into an agreement on reconciliation on his/her own, but with one condition that the legal representative of such a person has agreed. The consent of the legal representative shall be specified in the agreement and such consent shall be evidenced by their signatures. It is not allowed to conclude an agreement in criminal proceedings where one of the parties is a minor, if it has not been agreed[27]. Based on the above, it can be argued that a person who is a party to the case and who has not reached the age of 16 may, on his own motion, initiate an agreement on reconciliation make his legal representative.

The Criminal Procedural Code of Ukraine does not contain the definition "mediation" and "mediator". However, at the legislative level, there is the Law of Ukraine "on mediation", which defines the term "mediation" and "mediator". According to this Law, mediation is out-of-court activity aimed at settling a conflict by means of negotiations between the parties to the conflict and by means of one or more media organizations; The mediator, in his turn, is a person who acts as a specially prepared mediator whose main task is to assist the parties to the conflict in regulation and settlement of the dispute between them through a structured negotiation process.[28] The Criminal procedural Code of Ukraine does not contain a provision on the media, and accordingly does not regulate its status as an intermediary between the parties, which means that the process of development of the agreements on reconciliation between the parties of criminal proceedings is impeded, since, as a rule, the victim and suspect or accused are not competent in legal matters and cannot reach agreement without the intervention of an uninterested party. In order to improve this institute of criminal proceedings it is possible to adopt the experience of foreign countries, namely England, France and Finland, and to establish in criminal proceedings the statute of the media, determine its rights, duties and powers.[29] In addition, it can take into account Recommendation No. R (99) 19 of the Committee of Ministers[30] of the Council of Europe on the media in criminal cases, which states media needs professional training, that is, the person who is a medical professional must be qualified and must have accredited education. This, in turn, will allow for more effective and

[27] Decree of the Plenum ..., 2015.
[28] Draft Law ..., 2012.
[29] LYASH; KUBRAK, 2017, p. 153-157.
[30] Recommendation No. R (99) 19 ..., 1999.

effective enforcement of the rights of the parties to the proceedings to conclude agreements on reconciliation in criminal proceedings.[31]

Implementation of the institute "conclusion of agreements in criminal proceedings" in practice causes several problems, since the use of these agreements to resolve the conflict between the parties of proceedings introduces some principles of criminal proceedings, namely the principle of competition of the parties, i.e. ensuring realization of this principle, since then the participation of the defender in criminal proceedings is not obligatory; to some extent, the principle of establishing an objective truth is violated, since there is a lack of agreement on legal regulation of the moment from which it is possible to initiate an agreement in criminal proceedings to resolve the conflict between the parties.

However, the adoption of this institute and its introduction at the legislative level helps to solve a number of problems during criminal proceedings. There are guarantee of providing the victim full and prompt compensation for damages caused to him by unlawful actions of the suspect or accused. This type of agreement provides a significant process economy during criminal proceedings; this institute of criminal proceedings in the shortest possible time allows to realize the main tasks of criminal proceedings, restoration of rights violated, punishment of guilty persons and compensation of damages; conclusion of agreements in criminal proceedings allows to save budgetary funds.[32] The conclusion of agreements on reconciliation in criminal proceedings allows for effective and efficient resolution of the conflict between the parties to the proceedings and serves as a peaceful means of settling the conflict.

Many countries of the world use this institute for effective implementation of criminal proceedings. Among such countries can be distinguished Great Britain, Belgium, Italy, France, Poland, Germany and others,[33] however, the Institute of Criminal proceedings was known and widely used due to the United States of America. This can be done by reading case studies or even watching films where conflicts can be resolved by concluding an agreement on reconciliation between the parties to the process or initiating a peaceful resolution of the dispute between them. The United States of America is one of the countries in which the United States is legally regulated by the Institute of Criminal proceedings. It was there in 1839 that Reimond Moly introduced this institute and merged agreements and justice.[34] The precondition for this was the move, after the civil war, Americans and immigrants to the city, and due to this the level of crime began to grow. To combat

[31] Recommendation No. R (99) 19 ..., 1999.
[32] GUSAROV, 2014, p. 142-146.
[33] KRAUSOVÁ; LÁNÍKOVÁ, 2021, p. 203-229.
[34] LEONENKO; KOTSAR, 2013, p.153.

crime, the courts began to use the agreements in the form and form they currently exist. If we compare the United States of America and Ukraine and in the United States, as noted above, the reason for the introduction of agreements in criminal proceedings was the relocation of Americans and immigrants to large cities, which led to increased crime, in Ukraine the main reasons for the introduction of this institute were also the increase in crime rate, as well as absence of effective result from existence and application of the aral means. Following the introduction of this institution, the main task and purpose of justice was not to punish the guilty, but to eliminate the harm caused by illegal actions, to restore the violated rights and to reconcile the parties to the conflict.

The development of crime, and together with it and the loading of judges led to the fact that in 1920, 88% of all cases in New York and 85% of the case of Chicago began to be decided by the conclusion of agreements.[35] And in 1968, the US Supreme Court legislatively recognized the conclusion of agreements, however, in specific cases, thus recognizing their constitutionality.[36] In 1989, Frank Sander developed alternative ways of conflict resolution, for which he received a prize in the future. He developed a concept called "multi-door court", the essence of which was that the party to the proceedings, having consulted with the specialist, could choose a solutio.[37] Among the options for resolving the case can be identified mediation, judicial review, independent arbitration, mini-court.[38]

In the United States of America, regulation 11 (Federal Criminal Code), which provides guarantees for the protection of parties to criminal proceedings[39] is legally established. The introduction of an agreement in the USA guarantees fulfillment of the main tasks of the criminal process: Disclosure and punishment of the guilty, disclosure of the crime and prompt resolution of the case.[40] United States prosecutors have developed model agreements that differ between themselves and the type of act committed by the guilty party. Such model agreements are also so-called "price lists" by which the option of requalifying criminal charges can be chosen. After the investigation and agreement of all the terms of the agreement, the parties to criminal proceedings submit such an agreement for approval to the court, and the court in turn should approve, reject or postpone the decision to study the preliminary conclusion of the Commission on trial terms, i.e. the investigation and conclusion of the agreement by the special Commission, which is engaged in the execution of criminal penalties in the form of probation.

35 WALSH, 2017.
36 VLASOVA, 2013, p. 84.
37 ALEXANDRENKO; TITKO, 2013, p. 95.
38 FERREIRA, GIOVANNINI, GROMOVA, da ROCHA SCHMIDT, 2022, p. 6.
39 FEDERAL RULES ..., 2021.
40 KUCHYNSKA, 2014, p. 313.

Both US and Ukrainian laws provide for the right of the court to refuse to conclude agreements if such an agreement would contradict the interests of the victim. The US. law provides for a repeated application of the agreement in one criminal proceeding, which is different from the legislation of Ukraine, where the repeated application of the agreement in the same criminal proceeding is prohibited. Despite the widespread and long-standing nature of the Institute of conclusion of agreements in the United States of America, such conflict resolution practices have been repeatedly criticized for reducing the legitimacy and fairness of criminal justice, and all because of the fact that in the conclusion of agreements suspected and accused persons refuse from most of their rights by choosing a non-transparent process, which is almost devoid of competition.[41] In the criminal proceedings of European countries, conciliation and juicios rápidos are applied in Spain, the models "abbreviato" and "pattegiamento" in Italy, "absprachen" in Germany, "reconnaisance 41 preventable de coupabilité" in France.[42] This is explained by the similarity of the legal proceedings in these countries. These countries do not provide for negotiations on the terms of the agreement, everything is at the level of the law and within the limits determined by the law.

Thus, on the basis of the above mentioned, it can be argued that in 2012 the Criminal Procedure Code of Ukraine was renewed, which legally established the new institute of criminal proceedings – an agreement in criminal proceedings. Chapter 35 of the Criminal procedural Code of Ukraine regulates this institute and establishes two types of agreements: The agreement on reconciliation and the agreement on recognition of the guilty. A good article was carried out to study the agreement on reconciliation between the parties of criminal proceedings.

4 Conclusions

An agreement on reconciliation is an institution of criminal proceedings. The main purpose of which is a voluntary agreement between the victim and the suspect or accused. The content of which is to agree on the terms of responsibility of the suspect or accused in the event of his unlawful actions aimed at causing harm to the victim, and in connection with what compensation of such damage and renewal of rights of the victim. The basic conditions of the agreement on reconciliation were also studied, among which are: Free, subjective, compensatory, categorical and temporal. The main structural elements of the agreement on reconciliation are its parties, formulation of suspicion or accusation, the amount of damages with the indication of the period of its compensation, agreed punishment and consequences

41 TURNER, 2017.
42 MA, 2002, p. 22-55.

of the agreement conclusion and approval, as well as the consequences of failure to implement such agreement.

It is determined who can initiate an agreement on reconciliation, in particular, it may be injured, suspected or accused, which in turn deprives the reduction of the corruption component and abuse of power, if the initiators of the agreement could be the prosecutor, investigator or judge. The victim's representative was also analyzed and studied during the conclusion of the agreement on reconciliation between the parties to criminal proceedings. The participation of the victim's representative in certain cases contributes to the observance of the rights of such person. International experience in the conclusion of reconciliation agreements has been studied, in particular, the experience of the United States of America has been highlighted to a greater extent, since it is this state that was one of the first to develop the institute of conclusion of agreements in criminal proceedings. It can be argued that since the establishment of the institute of conclusion of agreements, Ukraine is ready to change the concept of criminal proceedings to the relevant European standards.

Condições para celebração de acordo em processo penal com a participação do representante da vítima

Resumo: A principal tarefa deste artigo é estudar a essência e finalidade do instituto do processo penal "celebração de acordo em processo penal", revelar a aplicação deste instituto do processo penal na prática, determinar o seu papel na esfera jurídica e social. vida e estudar as condições de celebração do acordo acima. Entre os métodos pelos quais se estuda o problema do tema em questão é possível distinguir um método dialético, jurídico-comparativo, método sistêmico, método jurídico-histórico, método jurídico-formal, método de análise e síntese. Os autores estudaram a experiência de países estrangeiros no combate à corrupção e propuseram introduzir a experiência internacional na legislação nacional para a experiência bem sucedida de celebração de acordos em processo penal, bem como para a eficácia desses acordos e o máximo cumprimento dos direitos das partes ao processo. O estudo descreverá o estado atual dos atos jurídicos que regulam a celebração de acordos, o conceito de acordos em processo penal e seus tipos e as principais razões para a celebração de acordos, os termos do acordo entre as partes no processo penal, as etapas e elementos da celebração de acordos. A participação da vítima no processo de celebração do acordo também foi investigada. A exemplo da experiência internacional de desenvolvimento e aplicação deste instituto são investigados o estabelecimento do instituto e seu posterior desenvolvimento, bem como as condições de celebração do acordo em tais estados.

Palavras-chave: Acordo sobre reconciliação; representante; mídia; reconciliação; revival da justiça

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Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

ZAVYDNIAK, Volodymyr; MULAR, Galina; CHASOVA, Tetiana; SOPILKO, Iryna; MUDROLYUBOVA, Nataliya. Conditions for conclusion an agreement in criminal proceedings with the participation of the victim's representative. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 04, n. 07, p. 241-258, jan./jun. 2022. DOI: 10.52028/rbadr.v4i7.15.