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THE CONCEPT AND SOCIO-LEGAL VALUE OF THE RECONCILIATION OF THE PARTIES IN THE ADMINISTRATIVE JUDICIARY OF UKRAINE

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The article is aimed at research of the concept and socio-legal significance of the reconciliation of the parties in the administrative proceedings of Ukraine. On the basis of legal methods of scientific knowledge, such as: dialectical, logical-formal, comparative-legal, etc., modern approaches to understanding the legal nature and essence of the concept of "reconciliation" are considered. It is proposed to consider the reconciliation of the parties in administrative proceedings as based on the principles of law and the norms of the current legislation, a voluntary and quick way of amicable (peaceful) agreement by the parties of a public-law dispute on mutually beneficial terms of reconciliation in a judicial procedure (without prejudice to the idea of people-centeredness and legality), which are approved by an administrative court. The socio-legal significance of reconciliation is highlighted, which is manifested in the fact that: 1) reconciliation of parties in administrative proceedings allows to properly use the positive potential of the dispute and to settle the public-law dispute in an amicable (peaceful) manner; 2) conciliation of the parties in administrative proceedings allows saving the time and money resources of the parties to the dispute and the court; 3) the reconciliation of the parties in administrative proceedings contributes to the pluralistic increase in the degree of democratization of administrative-legal dispute resolution and the transformation of the role of the judge. It is noted that the sooner the parties reach a consensus, the less time the court will spend on considering the case, which contributes to: a) actual savings in the amount of state expenses for resolving cases in court; b) increasing the amount of "free" time resource. It is indicated that there is a need to update the scientific opinion regarding the concept and socio-legal significance of the reconciliation of the parties in administrative proceedings in the conditions of the European integration of Ukraine. It was concluded that the introduction and spread of conciliation of the parties in administrative proceedings is a certain civilizational transformation of the understanding of justice, as well as the role of the judge in the resolution of public legal disputes, which is a reflection of the pluralistic tendency to expand the methods of resolving public legal disputes, which is observed today in the states – EU members.

Key words: court; judge; parties to the dispute; reconciliation of the parties; administrative proceedings; European Union.

Problem formulation. Reconciliation of parties in administrative proceedings is an attribute of a modern democratic and legal state. Therefore, enshrining this institution in the administrative legislation of Ukraine will contribute to the further development of Ukraine as a modern civilized state, which can satisfy its own European integration ambitions in the future. In addition, the studied phenomenon is characterized by a significant socio-legal significance, which is manifested in the fact that the reconciliation of the parties in administrative proceedings, in particular: 1) makes the practice of peaceful dispute resolution customary; helps to save money and time resources of the parties to the dispute and the court; contributes to the further evolution of justice in the state, which in the future may also include mediation procedures in public legal disputes provided for in the EU member states.

Analysis of the problem study. The problem of reconciliation of the parties in administrative proceedings has already been given attention by some administrative lawyers, in particular: T. O. Antsupova, S. S. Biluha, I. L. Zheltobryukh, M. M. Zaika, O. D. Sydelnikov, O. L. Hrytsaenko, E. V. Kataeva, T. A. Pluhatar, D. M. Yavdokymenko and other scientists have already studied the essence of reconciliation in judicial and extrajudicial procedures to one degree or another. At the same time, it should be stated that domestic and foreign scientists have not formulated universal approaches to understanding the essence of the reconciliation of the parties in administrative proceedings.

The article is aimed at research of the concept and socio-legal significance of the reconciliation of the parties in the administrative proceedings of Ukraine.

Presenting main materials. There is no definition of the concept of "reconciliation" in Ukrainian legislation. Critically analyzing the special scientific literature, we can note that in the available works of scientists, a certain scientific vision of the mentioned phenomenon is revealed, which is mainly interpreted by them as:

1) "the latest alternative way of resolving disputes in court proceedings, which has significant advantages, namely: voluntary participation in such a procedure; its speed and high efficiency, as the parties can agree on a mutually beneficial result" [1, p. 126];

2) "a complex, interdisciplinary legal institute that combines the norms of administrative law and administrative procedural law into an organizationally defined structure based on their focus on the peaceful settlement of an administrative-legal dispute in court" [2, p. 7];

3) "on the one hand, the agreement between the parties on the termination of a public-law dispute, and on the other – the settlement of material (positive) public-law relations" [3, p. 86]. In this sense, there is a certain ambivalence of reconciliation, which scientists draw attention to, pointing out that reconciliation is a concept of non-legal origin. However, given its current legal connotation, it can be concluded that the concept of conciliation "has an internal ambivalence, as it defines both the procedure to be followed in order to be able to put an end to the dispute, and the very consequences of the agreement" [4];

4) "the procedural legal fact of reaching an agreement between the parties to an administrative-legal dispute, which is manifested in their mutual willingness to conduct a reconciliation procedure, conclude a settlement agreement and submit it to the court for approval" [2, p. 71];

5) "a polymorphic and multidisciplinary procedure capable of taking the most diverse forms, always trying to achieve the same result – a settlement agreement between the parties to the dispute – and capable of adapting to all types of disputed issues" [4], in particular, to most public legal disputes.

It is worth agreeing with the opinion of I. O. Koretskiy that "reconciliation of the parties is one of the forms of legal consensus, an expression of the principle of dispositiveness, which is reflected in various forms of judicial proceedings" [5, p. 129].

At the same time, given the fact that people are characterized by different levels of conscientiousness, legal culture and legal awareness, as well as the inconsistency of their understanding of certain

actions and events, the need for the consensus reached by the parties to the dispute to acquire a certain status that will allow the parties to the dispute, who have reconciled, can count on the state guaranteeing the fulfillment of the terms of reconciliation. Therefore, the conciliation of the parties in administrative proceedings involves the mandatory "legalization" of the reached terms of reconciliation, namely the approval of such terms by the court, regardless of whether the parties to the dispute reached a consensus on the terms of reconciliation with or without the participation of a judge [6, p. 27].

Reconciliation of the parties in administrative proceedings can be considered as based on the principles of law and norms of current legislation, a voluntary and quick way of amicable (peaceful) agreement by the parties of a public-law dispute on mutually beneficial terms of reconciliation in a judicial procedure (without prejudice to the idea of people-centeredness and legality), which are approved by an administrative court. The proposed definition of conciliation allows you to understand it in the contractual procedural context, which is the plane for understanding "conciliation" in its actual context, namely, as the actions of the parties to the administrative-legal dispute who have reconciled, aimed at fulfilling the conditions of reconciliation, which are set forth in the statement on the reconciliation of the parties, approved by the court decision [6, p. 30].

Although the advantages of conciliation of the dispute, as well as other alternative methods of dispute resolution, are mainly connected to the fact that due to conciliation the number (duration) of legal proceedings are reduced (despite this is an important aspect), we should agree with the Spanish scholar B. Belando Garin (Beatriz Belando Garín) because the attempt to interpret conciliation only purely as an appropriate method is one of the biggest mistakes when analyzing the conciliation parties of a public-law dispute (mediation, etc.) [7, p. 266]. In fact, the advantages of reconciliation are manifested in a significant social effect, which has an obvious socio-legal significance.

The specified value of the studied phenomenon is revealed in the fact that:

1) *conciliation of the parties in administrative proceedings allows to properly use the positive potential of the dispute and to settle the public legal dispute in an amicable (peaceful) manner*. The corresponding "habituation" of the practice of achieving peace cannot be underestimated in view of the fact that "the judicial decision is unsatisfactory for at least one party to the dispute, and sometimes for both parties, and the solution formed in the conciliation process returns the parties to the dispute to a peaceful relationship, which is a particularly important element when these parties are required to continue living together: a public servant who has been subject to disciplinary sanctions, but has not been dismissed from his position or transferred to another position, will have to interact with the head of the personnel department; the company will have to continue to receive contacts from the municipality; the neighbor will have to live next to the one who prevented him from building a structure" [8, p. 20];

2) *conciliation of the parties in administrative proceedings saves time and money resources of the parties to the dispute and the court.* Regarding the saving of time, which is usually spent during the consideration of the case in court, it should be borne in mind that already in the preparatory session, the court in accordance with the requirements of Clause 2, Part 1 of Art. 180 of the Code of Administrative Procedure of Ukraine (hereinafter referred to as the Administrative Court of Ukraine) "finds out whether the parties wish to resolve the dispute through conciliation or go to court to settle the dispute with the participation of a judge" [9].

That is, the parties to the dispute can use the possibility of resolving the dispute through conciliation already at the preparatory meeting and are not deprived of this right at other stages of the case (also, the parties to the dispute are not deprived of this right within the limits of appeal and cassation [6, p. 16].

As for saving money, it is worth noting that in Art. 142 of the Code of Administrative Procedure of Ukraine enshrines the rule according to which the settlement of the case through conciliation is the basis for the court in the relevant ruling (or decision) in accordance with the procedure provided for by law to resolve the issue of returning 50 % of the court fee to the plaintiff (complainant or applicant), paid by him when filing a lawsuit (appeal or cassation complaint). In addition, it should be borne in mind that the sooner the parties reach a consensus, the less time the court will spend on the case, which contributes to:

a) actual savings in the amount of state expenses for resolving cases in court;

b) increasing the amount of "free" time resource.

3) *the reconciliation of the parties in administrative proceedings contributes to the pluralistic increase in the degree of democratization of administrative-legal dispute resolution and the transformation of the role of the judge.* Reconciliation of the parties to the dispute, as noted by T. A. Plugatar and E. V. Kataeva, involves "changing the role of the judge from a person who imposes his decision to a person who helps the parties to resolve the dispute by reaching a mutual compromise solution" [3, p. 87]. This, in their opinion, will contribute to increasing public trust in the judiciary and judges, which is of great importance today given that "Ukrainian courts have not yet become a reliable institution for the protection of citizens rights" [3, p. 88]. This position is not fair enough, because judicial protection today is one of the most effective ways to protect human rights, despite the traditional problems of insufficient material and technical support of the court, as well as constant judicial reforms, which together quite often are a barrier to effective implementation the court of its human rights functions.

At the same time, it should be noted that "judicial conciliation" is currently characterized by a number of shortcomings that had to be resolved, in particular, in the process of implementing the judicial reform in Ukraine in 2021. Despite this, in the specified context, it should be borne in mind that "a significant obstacle on the way to the effective application of the institution of reconciliation of the parties is the lack of an established understanding of its essence and legal nature" [2, p. 75]. Therefore, there is a need to update the scientific opinion regarding the concept and socio-legal significance of the reconciliation of the parties in administrative proceedings in the conditions of the European integration of Ukraine. The set goal will be achieved by performing the following tasks: 1) outline the main approaches to understanding reconciliation; 2) to find out the positions of scientists regarding the understanding of the main signs of reconciliation in general and reconciliation in administrative proceedings in particular; 3) to outline the main special features of reconciliation in the administrative proceedings of Ukraine; 4) formulate a definition of the concept of "reconciliation of the parties in the administrative proceedings of Ukraine" [6, p. 18].

Conclusions. Thus, the introduction and spread of conciliation of the parties in administrative proceedings is a certain civilizational transformation of the understanding of justice, as well as the role of the judge in the resolution of public legal disputes, which is a reflection of the pluralistic tendency to expand the methods of resolving public legal disputes, which is observed today in the EU member states.

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ПОНЯТТЯ Й СОЦІАЛЬНО-ПРАВОВЕ ЗНАЧЕННЯ ПРИМИРЕННЯ СТОРІН В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ УКРАЇНИ

Метою статті є дослідження поняття та соціально-правового значення примирення сторін в адміністративному судочинстві України. На основі правових методів наукового пізнання, таких як діалектичний, логіко-формальний, порівняльно-правовий тощо, розглянуто сучасні підходи до розуміння правової природи та сутності поняття “примирення”. Запропоновано розглядати примирення сторін в адміністративному судочинстві як оснований на принципах права та нормах чинного законодавства, добровільний та швидкий спосіб дружнього (мирного) погодження сторонами публічно-правового спору взаємовигідних умов примирення у судовому порядку (без шкоди ідеї людиноцентризму та законності), що затверджує адміністративний суд. Висвітлено соціально-правове значення примирення, яке виявляється в тому, що: 1) примирення сторін в адміністративному судочинстві дає змогу належно використати позитивний потенціал спору та узвичаїти вирішення публічно-правового спору в дружній (мирний) спосіб; 2) примирення сторін в адміністративному судочинстві дає змогу зекономити часовий і грошовий ресурс сторін спору та суду; 3) примирення сторін в адміністративному судочинстві сприяє плюралістичному збільшенню міри демократизації вирішення адміністративно-правового спору та трансформації ролі судді. Зазначено, що чим раніше сторони досягнуть консенсусу, тим менше часу суд витратить на розгляд справи, що сприяє: а) фактичній економії обсягу видатків держави на вирішення справ у суді; б) збільшенню обсягу “вільного” часового ресурсу. Виникла потреба в актуалізації наукової думки стосовно поняття та соціально-правового значення примирення сторін в адміністративному судочинстві в умовах євроінтеграції України. Зроблено висновок про те, що впровадження та поширення примирення сторін в адміністративному судочинстві є певною цивілізаційною трансформацією розуміння правосуддя, а також ролі судді у вирішенні публічно-правових спорів, що є відображенням плюралістичної тенденції розширення способів вирішення публічно-правових спорів, яка сьогодні спостерігаються у державах–членах ЄС.

Ключові слова: суд; суддя; сторони спору; примирення сторін; адміністративне судочинство; Європейський Союз.