The Powers of the Court of First Instance for the Reconciliation of the Parties in the Administrative Procedure of the Russian Federation

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ABSTRACT
The article is devoted to the study of the varieties of the powers of the court of first instance to reconcile the parties in the administrative proceedings of the Russian Federation in order to clarify the list of cases in administrative proceedings and the conditions under which the possibility of carrying out conciliation procedures in administrative proceedings is allowed. The work studies the complex of issues of the procedural and legal status of the court of first instance in the implementation of conciliation procedures in cases from administrative and other public legal relations, forms and limits of the implementation of the procedural powers of the court of first instance, registration of the results of the activity of the court of first instance in judicial acts, the conditions for their adoption and approval by the court of first instance in order to unify the legal regulation of the implementation of conciliation procedures by the court of first instance to resolve legal disputes arising from administrative and other public legal relations between citizens and organizations against unlawful decisions of public authorities, unification of the conceptual apparatus in legislation, science and law enforcement practice, the need to make some changes to the list powers of the court of first instance in the implementation of conciliation procedures in cases of administrative proceedings. Based on the analysis of the theory, current legislation and judicial practice, it is concluded that the principle of court activity with limited adversariality in comparison with civil proceedings in the implementation of conciliation procedures in administrative proceedings, clarifications are made in the list of cases in which the possibility of exercising the powers of the court to reconcile the parties is excluded in administrative proceedings, as well as a list of cases in which it is possible to exercise the powers of the court of first instance to reconcile the parties, the criteria for classifying the powers of the court of first instance in the implementation of conciliation procedures in administrative proceedings are determined.
Keywords: *administrative proceedings, first instance court, judicial conciliation, mediation, conversation, settlement agreement*

1. INTRODUCTION

Among the powers of the court of first instance in the administrative proceedings of the Russian Federation, the powers of the court of first instance to reconcile the parties in administrative proceedings [1] are of particular relevance and importance, which is due to the judicial statistics on the increase in the number of cases considered and resolved by courts from administrative and other public legal relations [2], the doctrine of "justice of compromise and social peace", aimed at rethinking the functions and goals of legal proceedings, providing the court with the possibility of the parties to settle cases peacefully, since each legal case subject to consideration and resolution in court requires large financial costs from the state, ensuring the functioning of the court system in administration of justice [3].

The procedural activity of the court in administrative proceedings when considering and resolving cases from administrative and other public legal relations is one of the important components of the realization of the right to protect violated or disputed rights of citizens or organizations in relation to illegal actions of public authorities, which helps to reduce the costs of both the parties themselves and courts when considering and resolving cases of administrative proceedings, strengthening the atmosphere of partnership and cooperation between the parties in the field of administrative and other public legal relations [4].

The need to include conciliation procedures in the administration of justice by courts in order to reduce the burden on judges and court staff by optimizing the activities of court proceedings and the current activities of the courts of the Russian Federation was provided for in the federal target programs "Development of the judicial system of Russia" approved by the Resolutions of the

Government of the Russian Federation (hereinafter FTP). At the moment, in the Russian Federation operates the Federal Target Program "On the development of the judicial system in Russia for 2013-2020". The implementation of the measures of the FTP "On the Development of the Judicial System of Russia" led to the adoption of changes in the legislation in terms of conciliation procedures in administrative proceedings, which contributed to the formation of interest in the legal literature regarding the use of the mechanism of conciliation procedures in the administration of justice in administrative proceedings [5].

It should be noted that the expansion of the scope of the institution of conciliation and the procedural powers of the court aimed at the implementation of reconciliation of the parties in administrative proceedings are consistent with international standards for the administration of justice, namely, with the Recommendation of the Committee of Ministers of the Council of Europe No. R (86) 12 “On measures to prevent and reducing the excessive workload on the courts ", the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Recommendation of the Committee of Ministers of the Council of Europe 2001 (9) "to Member States on alternatives to litigation between administrative authorities and private parties " providing for the possibility of the court exercising its powers in relation to the result of conciliation in cases from administrative and other public legal relations, etc. [6].

The purpose of international standards for the administration of justice is, on the one hand, to ensure the state's ability to exercise the right to access to justice (Article 6 of the ECHR), on the other hand, to limit the number of non-judicial tasks performed by judges; reduce any unnecessary workload on the courts to improve the quality of the administration of justice through conciliation procedures and empower judges to seek reconciliation between the parties through a settlement agreement on all relevant issues at any stage of the proceedings [7].

All this implies the possibility of ensuring the effective functioning of various types of conciliation procedures in administrative proceedings, understanding the features and scope of the procedural powers of the first instance court in administrative proceedings when considering and resolving cases from administrative and other public legal relations [8].

2. MATERIALS AND METHODS

The initial moment in the study of the essence and content of the procedural powers of the court of first instance to reconcile the parties in administrative proceedings are:

1) acts of international and Russian legislation;
2) scientific articles on civil and arbitration processes, administrative proceedings in the Russian Federation;
3) judicial practice of commercial courts, courts of general jurisdiction in the Russian Federation for the consideration and resolution of cases from administrative and other public legal relations, as well as data from judicial statistics.

Acts of international and Russian legislation established the rules governing the procedure for the activities of the court and the parties in administrative proceedings in the implementation of conciliation procedures.

Within the framework of the science of civil and arbitration processes, issues were considered about the concept and content of conciliation procedures, their classification in civil proceedings, the peculiarities of the parties' activities in developing conditions for conciliation in court, the role of the court in the implementation of conciliation procedures in civil proceedings, the possibility of extending the mechanism for the implementation of conciliation procedures during consideration and the resolution of cases from administrative and other public legal relations, taking into account the previously existing procedure for considering and resolving cases from administrative and other public legal relations in courts of general jurisdiction in section III of the Civil Procedure Code of the Russian Federation before the adoption of the Code of Administrative Procedure in the Russian Federation, as well as section III that has retained its validity of the Arbitration Procedure Code of the Russian Federation of the procedure for considering and resolving cases from administrative and other public legal relations in arbitration courts of the Russian Federation.

In connection with the adoption in 2015 of the Code of Administrative Procedure in the Russian Federation and subsequent changes in legal regulation in terms of conciliation procedures carried out by the court of first instance in administrative proceedings in the Russian Federation, studies of the judicial practice of conducting conciliation procedures in relation to specific cases in court proceedings received further reflection, which contributed to the understanding of the peculiarities of the procedural activities of the court in administrative proceedings [9].

Among the methods of studying the powers of the court to reconcile the parties in administrative proceedings in this study, both general scientific methods of cognition—analysis, synthesis, comparison and description—and specific scientific methods of cognition—historical-legal, comparative-legal, formal-legal analysis of the texts of scientific articles, acts of international and Russian legislation, materials of judicial statistics and judicial practice—were used [10].

3. LEGAL REGULATION OF CONCEPTIONAL PROCEDURES IN THE ADMINISTRATIVE COURT PROCEEDINGS OF THE RF

The legal regulation of conciliation procedures in the administrative proceedings of the Russian Federation has undergone a change through the adoption of:

1) the Federal Constitutional Law No. 3 as of 26 July 2019 "On Amendments to Article 5 of the Federal Constitutional Law "On the Supreme Court of the Russian Federation in connection with the improvement of conciliation procedures ";
2) the Federal Law No. 197 as of July 26, 2019; "On Amendments to Certain Legislative Acts of the Russian Federation", which entered into force on October 25, 2019. Two new procedures were attributed to the number of conciliation procedures in administrative proceedings: negotiations and judicial conciliation;
3) the Resolutions of the Plenum of the Supreme Court of the Russian Federation of October 31, 2019 No. 41 "On Approval of the Regulations for the Conciliation of Judicial Conciliation", which regulates the procedure for the activities of the court in the proceedings of which there are cases from administrative and other public legal relations and judicial conciliators.
The idea of the adopted changes in legal regulation is to ensure the possibility of reconciliation of the parties in administrative proceedings in the presence of active procedural actions of the court in its achievement by the parties in accordance with the goals and objectives of administrative proceedings, which is manifested through the procedure for the exercise of procedural powers by the court when considering and resolving specific cases of administrative proceedings at any stage of the administrative proceedings [11].
The adopted amendments fully comply with the objectives and principles of legal proceedings in courts of general jurisdiction and arbitration courts, as well as general trends in the development of procedural legislation, which are defined in the resolution of the IX All-Russian Congress of Judges as of December 8, 2016 No. 1 "On the main results of the functioning of the judicial system of the Russian Federation and priority directions of its development at the present stage."
Thus, through the adopted changes in the legal regulation of conciliation procedures in the administrative proceedings of the Russian Federation, the following types of them appeared:
1) agreement on the circumstances of the case;
2) amicable agreement;
3) mediation;
4) negotiations;
5) judicial conciliation;
6) other procedures provided by law.
The rules for regulating conciliation procedures are enshrined in the procedural codes governing the procedure for exercising the powers of the courts to reconcile the parties in administrative proceedings:

1) the Code of Administrative Procedure of the Russian Federation (hereinafter referred to as the CAP RF, Articles 137-137.7);
2) the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the APC RF) (Chapter 15 Conciliation procedures. Amicable agreement (Articles 138-142)).

Changes in the legal regulation of conciliation procedures in administrative proceedings are aimed at providing:
1) to persons participating in the case of additional opportunities to resolve disputes arising from administrative and other public legal relations through any of the conciliation procedures in compliance with the procedure for their conduct;
2) implementation of the principle of court activity in administrative proceedings with the assistance of the parties in reconciliation;
3) the conditions for the implementation of conciliation procedures and the scope of application of conciliation procedures for administrative and other public legal relations.
Consequently, the legislator provides for an open list of conciliation procedures that can be introduced through the adoption of special laws, as well as the possibility of settling disputes arising from administrative and other public legal relations of citizens and organizations in relation to illegal actions or inaction of public authorities by vesting the appropriate competence of the court of first instance in administrative proceedings, which indicates the continuity of doctrinal developments in relation to ensuring the implementation of the right to conciliation in the science of civil and arbitration proceedings [12].

4. IMPLEMENTATION OF CONCEPTIONAL PROCEDURES BY THE COURT OF FIRST INSTANCE

4.1. Conditions for the exercise of the powers of the court of first instance in administrative proceedings for reconciliation of the parties

Ensuring the possibility of implementing conciliation procedures is carried out through the powers of the court of first instance when considering and resolving various categories of cases from administrative and other public legal relations.
Therefore, it is necessary to determine the general and special powers of the court of first instance in administrative proceedings, implemented in the framework of various conciliation procedures, as well as determine the list of cases of administrative proceedings in which there is the possibility of conducting conciliation procedures, and in which categories of cases of administrative proceedings the conduct of conciliation procedures is excluded.
The fact that in cases of administrative proceedings the principle of the activity of the court operates [13], the manifestation of which should receive a detailed settlement in terms of the goals of conciliation procedures, increased court control over the behavior of the parties during their conduct, procedural registration of the results of conciliation procedures and approval of the conditions of conciliation court [14], distinguishes these powers of the court in administrative proceedings from the powers of

the court in civil proceedings in relation to conciliation procedures [15].

All this determines the essence and content of the powers of the court in administrative proceedings in the implementation of specific conciliation procedures when considering and resolving cases from administrative and other public legal relations.

Therefore, we consider it necessary to highlight the following general procedural actions of the court, characteristic of the implementation of any type of conciliation procedures, which are subdivided into:

1) determination of the list of cases of administrative proceedings, in which it is permissible to conduct conciliation procedures;

2) actions to check the conditions under which the possibility of reconciliation and prevention of abuse of the right is allowed.

It should be noted here that the doctrine of administrative law formulated a condition on the possibility of reconciliation of the parties in legal disputes on the protection of subjective administrative rights, that is, the rights belonging to specific subjects of administrative legal relations and the impossibility of reconciliation of the parties in relation to disputes over the protection of objective rights, that is, the issues of legality of the administrative acts concerning general public interests and legal order [16].

In our opinion, this approach requires adjustment in the part of the fact that administrative proceedings include not only disputes from administrative legal relations, but also disputes from public legal relations, which differ from disputes arising from administrative legal relations.

Cases arising from administrative legal relations are any cases that are related to the implementation of the current administrative powers of the executive authorities in the social, cultural, economic spheres.

Cases arising from public legal relations cover cases that are not related to the implementation of current administrative actions and establish the procedure for exercising power in the field of:

1) rule-making (cases on challenging normative acts and acts with normative properties);

2) politics (cases on the protection of electoral rights, cases on the protection of the rights of participants in public events);

3) the proper procedure for the administration of justice in various legal cases (cases of compensation for violations of legal proceedings within a reasonable time), etc.

4.2. List of cases of administrative proceedings in which the application of conciliation procedures is permissible

Taking into account the changes in legislation and judicial practice of considering and resolving cases of administrative proceedings by courts, it is necessary to clarify the list of cases of administrative proceedings in which it is possible to exercise the powers of the court in terms of reconciliation of the parties, and in which cases such powers are excluded.

Judicial practice allows for the possibility of conciliation in the following cases arising from public legal relations:

1) on contesting the cadastral value;

2) cases related to the suspension of activities or liquidation of non-profit organizations;

3) cases on the prohibition of the activities of public or religious associations that are not legal entities;

4) cases on challenging a proposal to change the place and (or) time of holding a public event, as well as a proposal to eliminate by the organizer of a public event the discrepancy between the purpose, form and other conditions of holding a public event specified in the notification, the requirements of the Law on Public Events, with the exception of cases on challenging refusal of a public authority to coordinate the holding of a public event.

Consequently, the court should determine the type of public legal relations, as well as the provisions of the legislation allowing for the possibility of conciliation in this category of cases with the establishment of the existence of valid relations of citizens or organizations with a specific public authority within the framework of procedures established by law, which are strictly regulated in comparison with civil law regulation of relations between private individuals and cover the subjective public rights and legitimate interests of specific citizens or organizations with a public authority, as well as the interests of a wide range of individuals, that is, general public interests, and do not violate the prohibitions provided by law.

For example, in cases related to the suspension of activities or liquidation of non-profit organizations, public or religious associations that are not legal entities (hereinafter organizations), it is impossible for the court to carry out conciliatory procedures in connection with the implementation of terrorist or extremist activities by these organizations, as well as other gross violations of the law. through which a real threat of harm is created or actions that entail harm to the life or health of citizens, organizations, the environment, the legitimate economic interests of society and the state. In all other respects, the court has the right to carry out conciliation procedures if violations can be eliminated in the manner prescribed by law.

The reconciliation agreement must contain the procedure and terms for the elimination of violations of the law by the administrative defendant, which served as the basis for the appeal of the authorized body with a request for liquidation, while maintaining the obligation of the association of citizens to carry out the liquidation procedure in the event of non-fulfillment of the specified conditions of the agreement (Article 353 of the CAP RF, paragraph 35 Resolution Plenum of the Supreme Court of the Russian Federation of December 27, 2016 No. 64 "On some issues arising in the consideration of cases by courts related to the suspension or liquidation of non-profit organizations, as well as the prohibition of the activities of public or religious associations that are not legal entities")

With regard to the refusal of a public authority to coordinate the holding of a public event, one should also take into account the impossibility of reconciliation in connection with gross violations of the law on public events, a call for violation of sovereignty and territorial integrity and other values established by the Constitution of the RF, in relation to other conditions for holding public events that do not violate the prohibitions established by law, the implementation of reconciliation is possible.

4.3. List of cases of administrative proceedings in which the application of conciliation procedures is not allowed

Among the cases of public proceedings in which it is impossible to conduct conciliation procedures, the CAP RF provides for cases on challenging regulations (part 12 of article 213 of the CAP RF).

We believe that the list of cases in which it is impossible to conduct conciliation procedures should be supplemented by amending the CAP RF in relation to cases:

1) on challenging acts containing clarifications of legislation and possessing regulatory properties (part 2, clause 1.1, article 1 of the CAP RF);

2) on the protection of electoral rights and the right to participate in a referendum of citizens of the Russian Federation;

3) on the suspension or liquidation of a political party, a non-profit organization that is not a legal entity (part 3, clause 1, article 1 of the CAP RF) upon establishing the fact of terrorist and extremist activities;

4) on the termination of the activities of the media (part 3, clause 2, article 1 of the CAP RF), restricting access to the audiovisual service (part 3, clause 2.1, article 1 of the CAP RF), on the recognition of the information posted on the Internet as prohibited, (part 3, clause 2.2, article 1 of the CAP RF); on the recognition of information materials as extremist (part 3, clause 2.3, article 1 of the CAP RF);

5) on the placement of a foreign citizen or stateless person in a special institution or extension of the period of stay in a special institution (part 3, clause 4, article 1 of the CAP RF);

6) on the protection of the interests of a juvenile or a person recognized as incapacitated to save their life (part 3, clause 9, article 1 of the CAP RF).

This list of the cases to be considered and resolved in court is associated with violations of the prohibitions provided for by the relevant regulatory legal acts that ensure the normal functioning of society and the state, which predetermines the features of the powers of the court of first instance in administrative proceedings in the exercise of powers to reconcile the parties, which are subject to further procedural regulation in terms of determining the list of cases in administrative proceedings, for which it is impossible to apply conciliation procedures.

4.4. Checking the conditions under which the possibility of reconciliation and prevention of abuse of the right by the parties is allowed

It should be noted that the parties in administrative proceedings are limited in the formation of conditions for mutual concessions in comparison with civil proceedings carried out by courts of general jurisdiction and arbitration courts, which is confirmed by the current legislation and judicial practice in terms of tax disputes: (Resolution of the Arbitration Court of the Ural District of 01/23/2017 No. F09-10797/16 in case No. A76-18774/2015; Resolution of the Arbitration Court of the Ural District dated 08/01/2016 No. F09-1251/15 in case No. A34-1891/2014; Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 05/27/2019 No. 305-ES18-25601 in case No. A40-150430/2014).

According to Article 64 of the Tax Code of the Russian Federation, the tax authority does not have the power to exempt the taxpayer from the obligation to fulfill the obligation to pay taxes; accordingly, the court refuses to approve the conciliation agreement, if this condition is present and continues to consider the case on the merits, since the condition on exemption of the taxpayer from execution the obligation to pay legally established taxes and fees violates the public interests of the state in replenishing the budget in order to implement the social and economic tasks of the state in relation to society.

However, this does not mean that the tax authority has no right to reconcile with a specific taxpayer. The possibility of reconciliation of the tax authority with the taxpayer is allowed on other conditions by providing the taxpayer with an installment plan for repayment of obligations to pay taxes according to the repayment schedule, deferral of tax payment, changing the methods of tax payment, which helps to strengthen trust between taxpayers and tax authorities and ensures that the state fulfills its obligations to society in general [17].

In cases of challenging the cadastral value, the reconciliation of the parties implies compliance by the parties with the restrictions established by law (in terms of the taxation mechanism), as well as taking into account the property interests of the person who filed an administrative statement of claim challenging the cadastral value, the presence of evidence of the revised value of the property, namely, one from the reports submitted by the parties on the appraisal of the real estate object, on the basis of which the parties form a condition of conciliation, as well as the procedure for the distribution of court costs (part 4 of article 46, article 137 of the CAP RF, clause 19 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 06/30/2015 No. 28 "On some issues arising in the consideration of cases by courts challenging the results of determining the cadastral value of real estate").

Consequently, when considering and resolving cases of administrative proceedings, the court has increased control over the formation of conditions for conciliation and prevention of abuse of law [18].

With regard to the abuse of the right, one can consider the actions of the parties in case of an unjustified refusal to use one or another conciliatory procedure for resolving a dispute after a court ruling has been issued.
Among the powers applied by the court in relation to the dishonest party a sanction in the form of compensation for court costs is provided [19].
The court exercises similar powers in relation to new types of conciliation procedures such as judicial conciliation, negotiations and mediation [20].
At present, consideration of the practice of exercising the powers of courts of general jurisdiction in relation to negotiations is not possible, since the possibility of negotiations by the parties is carried out on conditions determined both by the parties themselves and by federal laws, which provide for the mandatory conduct of negotiations. Currently, no such federal laws have been adopted in the Russian Federation.
Also, it is not possible to study the practice of using mediation and judicial conciliation in administrative proceedings when considering and resolving cases of administrative proceedings.
However, taking into account the current changes, it seems necessary to highlight the following powers of the court in relation to all types of conciliation procedures:
1) clarification of the right to settle a dispute using conciliation procedures provided for in Article 137.2 of the CAP RF, the timing and legal consequences of conciliation procedures, as well as the procedure for conducting each of the procedures;
2) issuing a ruling on the appointment of conciliation procedures, the timing of their implementation, the subject of the dispute, issues that are subject to settlement;
3) the issuance of a ruling on the extension of the period for conducting conciliation procedures upon satisfaction of the petition of the parties or on the court's own initiative;
4) checking the conditions for conciliation and issuing a ruling on approving the conditions for conciliation and terminating the proceedings.
With regard to mediation and judicial conciliation in the ruling on the appointment of conciliation procedures, it is required to indicate the candidacies of a mediator or judicial conciliator, the objectives of which are to assist the parties in achieving a mutually acceptable result of conciliation in cases from administrative and other public legal relations and ensuring the possibility of settling legal disputes, which will provide an opportunity reducing the burden on the court in the administration of justice in administrative proceedings.
Depending on the stages of the consideration of the case, the powers of the court to reconcile the parties in administrative proceedings can be exercised on:
1) the stages of preparation of the case for trial, including a preliminary hearing,
2) consideration of the case on the merits,
3) in the execution of a judicial act.
Depending on the basis for the emergence of powers to reconcile the parties, powers may arise: on the basis of a petition of the parties or at the proposal of the court.

The CAP RF stipulates that the parties enjoy equal rights to choose a conciliation procedure, determine the conditions and terms of its conduct, the candidacy of an intermediary, including a mediator or a judicial conciliator, and other issues, provided that the laws and other regulatory legal acts do not provide otherwise [21].
A court proposal for a conciliation procedure may be formalized through:
1) rulings on the acceptance of an administrative statement of claim for proceedings;
2) rulings on the preparation of an administrative case for trial;
3) making another ruling on the case;
4) entry into the minutes of the court session.
For the parties to consider the issue of the possibility of using the conciliation procedure, the court has the right to postpone the trial of the administrative case and announce a break in the court session. At the request of the parties, the court suspends the administrative proceedings for the period necessary for the reconciliation of the parties (Article 191 of the CAP RF). If the settlement of the conflict was successful and the parties nevertheless concluded an agreement on reconciliation, it should be carefully examined by the court before its approval [22].

5. CONCLUSION

Thus, if the conclusion of an agreement on conciliation is expressly prohibited by law, contradicts the merits of the administrative case in question, or violates the rights of others or contains conditions under which conciliation is not allowed, then in accordance with Art. 46 of the CAP RF, the court should not approve it, and the trial should continue.
In our opinion, the application of the above conciliation procedures in the future will entail a clarification of the list of the subject matter of the legal cases under consideration and the powers of the first instance court in relation to each of the types of conciliation procedures at each of the stages of administrative proceedings, which will ensure the possibility of fair consideration and resolution of legal disputes in administrative proceedings.

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