RESTRICTIONS ON THE RIGHT TO CONCLUDE A PEACEFUL AGREEMENT IN THE CIVIL PROCEDURE OF POST-STATE STATES: COMPARATIVE LEGAL ASPECT OF RESEARCH

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Annotation. In this article, the authors analyze the legislative restrictions of post-Soviet countries on the impossibility of exercising the right to conclude an amicable agreement in civil proceedings. An analysis of the normative enshrinement of these legislative restrictions and concluded that the legal institution of amicable settlement should be enshrined in the first sections of procedural codes with a detailed description of the amicable settlement procedure and reservations about the impossibility of this, as it belongs to the general part of civil procedural law. Such an approach will help to save the normative material in the codified act and adequately apply the institution of amicable settlement by all courts. Restrictions on the right to conclude an amicable agreement in civil proceedings by the authors are divided into three groups. These groups of restrictions on the right to conclude an amicable agreement are analyzed in terms of substantive and procedural law of post-Soviet countries, the practice of its application by the judiciary and the legal doctrine prevailing in the state. As a result of comparative legal research, it was concluded which restrictions on the right to conclude an amicable agreement should be left, and which should be abandoned or not allowed such wording.

Key words: civil process, post-Soviet countries, peace agreement, restrictions.

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Introduction. At the international legal level, numerous legal acts (the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights, the Darkness of Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1973, etc.) require states to guarantee everyone the right to judicial protection. This international legal standard has been enshrined in many constitutions of the world and has become a defining principle of procedural law: the principle of access to justice. According to its content, any person is guaranteed the opportunity to enjoy fair and effective judicial protection. To ensure this, unlimited judicial jurisdiction was gradually formed, where the resolution of any legal dispute or other legal issue could be submitted to the court. In particular, the Constitution of Ukraine as amended until June 2016 in Art. 124 provided that "the jurisdiction of the courts extends to all legal relations arising in the state" [1].

Subsequently, the Constitutional Court of Ukraine gave an interpretation to this article, which in fact consolidated the unlimited judicial jurisdiction, stating that "the refusal of the court to accept claims" in accordance with applicable law is a violation of the right to judicial protection [2], and "a person's right to go to court cannot be restricted by law" [3].

This approach has led to the fact that courts in many countries have been overwhelmed with cases and have not been able to cope with their workload. Many cases could take several years to process and required significant financial costs, which was completely inconsistent with the effective and fair protection that the court was supposed to represent. The consequence of the crisis of the judicial system was the formation in the second half of the twentieth century. an extensive system of alternative dispute resolution (ADR).

Currently, the ADR system covers all non-judicial procedures for resolving legal disputes. In particular, it may include a claim procedure, arbitration (arbitration), a mini-court, the activities of administrative bodies, the work of the commission on labor disputes, the ombudsman, independent examination of the dispute, and so on. One of the procedures of conciliation is the procedure of concluding an amicable agreement in civil proceedings. A number of post-Soviet countries explicitly warn in their legislation that the peace agreement is a conciliation procedure. For example, Chapter 17 of the Civil Procedure Code (hereinafter – CPC) of Uzbekistan, called "Conciliation Procedures" regulates the conclusion of an amicable agreement [4]. or Chapter 19 of the CPC of Armenia, called "Reconciliation" regulates the conciliation process, which may result in a peace agreement [5].

The current stage of development of civil procedural law in the post-Soviet countries shows that many conciliation procedures are at the stage of their comprehension. Given the commonality and openness of borders, internationalization of trade, the formation of supranational law and order, it is important to understand the legal reservations about the impossibility of concluding an amicable agreement, which are inherent in foreign countries. This will make it possible to develop a normative model of the amicable settlement procedure that avoids conflicting legislative decisions and takes into account best case law.

Materials and methods. The empirical basis of this article is the provisions of the national civil procedural legislation of the post-Soviet countries of the institution of amicable settlement and the practice of their application by national courts. The theoretical basis of this article is foreign research on the regulatory framework of restrictions on the right to conclude an amicable agreement and the basis of dollars. this.

Research methods are selected based on the subject of the study and the goals set by the authors. The main research methods are analysis, synthesis and comparative law. Synthesis and analysis made it possible to understand the essence of the grounds that prevent the court from approving the settlement agreement, giving it the legal force of a court decision. The formal-legal method was used in the interpretation of foreign national regulations and judicial documents relating to the restriction of the procedure for concluding an amicable agreement in civil proceedings. The comparative legal method made it possible to identify common and different approaches in regulating the issue of restricting the parties and others to conclude an amicable agreement, which, in turn, gave the authors the opportunity to draw their own conclusions on problematic aspects of reconciliation.

Results.

Amicable settlement as a conciliation procedure in civil proceedings.

Most post-Soviet countries determine that the purpose of civil proceedings is to protect the rights, freedoms and interests of individuals and legal entities. This goal shows that the court is entrusted with the implementation of a rather important function: law enforcement. However, as the case law of Western Europe and the United States shows, the bulk of civil cases are essentially not considered, as the conflict is resolved through conciliation procedures. Thus, in the United States, about 90% of lawsuits filed in US courts successfully pass through ADR institutions integrated into the judiciary and operating outside it [6. p. 39]. This means that the court is primarily responsible for reconciling the parties to the dispute. And this feature comes to the fore today. Although the legislation of the post-Soviet states directs the court to do everything in its power to resolve the case or part of it by compromise or otherwise with the consent of the parties, if this is reasonable in the court's judgment (eg Article 4 (4) of the Estonian CPC [7]), but the reconciliation of the parties to the conflict has not been identified as the aim or task of civil proceedings.

In order to understand what is the restriction of the right to conclude an amicable agreement in civil proceedings, it is necessary to first give this agreement a brief description.

An amicable agreement is an agreement between the plaintiff and the defendant (parties to a civil case) to terminate the dispute and establish a new material relationship between them on the basis of a change in their material rights and obligations. Influencing the nature of substantive legal relations, changing their content, the amicable agreement is in some cases a novelty of the obligation that existed before filing a lawsuit. But, in contrast to a similar method, the termination of the obligation in civil law change of the obligation under the amicable agreement: 1) consists in a special procedural form of its implementation;

2) aimed at ending a civil case; 3) is approved by the court by issuing a decision to close the proceedings; 4) the terms of the amicable agreement are included in the content of the court decision. The combination of the substantive and procedural aspects of the amicable settlement indicates its dual nature: on the one hand it is aimed at settling the material relations between the parties, but on the other hand it is aimed at closing the civil proceedings [8, p. 564].

It is worth noting one terminological problem at once. The institution of amicable settlement is enshrined in the civil procedural law of all post-Soviet countries, but only in Estonia is an amicable settlement called a "judicial compromise" (Article 4 (3) of the CPC of Estonia). However, by its nature and procedural consequences, a compromise is reminiscent of an amicable settlement. Moreover, the CPC of this country regulates both a judicial compromise and an agreement that may be concluded as a result of the conciliation procedure, which is regulated by a separate Estonian Law "On Conciliation Proceedings" [9]. It is noteworthy that the grounds for their non-recognition by the court in most cases coincide (Article 430 (3), Article 627^1 (3) of the CPC of Estonia).

Scholars of many post-Soviet states agree that the amicable settlement in civil proceedings is an agreement (contract) aimed at modifying the material rights and obligations of the parties, entails procedural consequences in the form of termination of proceedings. Thus, the team of Ukrainian scholars who carry out scientific interpretation of the CPC of Ukraine on amicable settlement in civil proceedings note that "the parties will settle their dispute without waiting for the court to establish the truth in the case, and determine a number of rights and obligations the essence of the peace agreement" [10, p. 420]. A similar view of the settlement agreement is given by Belarusian scientists. In particular, V.G. Tikhina understands the amicable agreement as an agreement between the parties, according to which the plaintiff and the defendant by mutual concessions, on mutually acceptable terms, redefine their rights and obligations and terminate the dispute in court that arose between them [11, p. 166-167]. Kazakh scholars note that an amicable agreement is an agreement on the voluntary settlement of a dispute over the right, which is reached under certain conditions on the establishment of changed or new legal relations between the plaintiff or defendant [12, p. 385-386]. Russian scholars point out that the conclusion of an amicable agreement is one of the important administrative rights of the parties to a civil case, the implementation of which deprives these parties of the opportunity to re-apply for an identical lawsuit [13]. The CPC of the Kyrgyz Republic speaks about the impossibility of re-appeal to the court with a statement of claim between the same parties, about the same subject and on the same grounds when concluding an amicable agreement and approving it by the court. 1 Article 220, Part 2 Article 221) [14].

But despite the importance of the conciliation procedure for modern civil proceedings, in particular by concluding an amicable agreement designed to relieve the courts and "amicably" resolve the legal conflict between the parties, such a procedure is not always allowed in civil proceedings. There are a number of restrictions set by law that prevent the conclusion of a civil case by concluding an amicable agreement.

Peculiarity of normative regulation of restriction of the right to conclude an amicable agreement in civil proceedings.

The norms that enshrine legislative precautions before concluding an amicable agreement in civil proceedings are different. Awareness of this is important not only from the point of view of the correct use of legislative techniques, but is important for the process of their interpretation. Yes, all post-Soviet countries allow the conclusion of an amicable agreement at any stage of the civil process. It follows that the institution of amicable agreement is general, and therefore the procedure for concluding an amicable agreement, warnings about the impossibility of concluding it and the procedure for its approval by the court should be contained in Section I of the CPC, which regulates the general provisions of civil procedure. In the future, these general rules can be applied by courts of all instances, taking into account the peculiarities of their proceedings. However, only one post-Soviet country took into account that the institution of amicable settlement belongs to the general part of civil procedural law. This is the Republic of Uzbekistan, which in the structure of the first section of the CPC highlights Chapter 17 "Conciliation Procedures", which describes in detail the procedure for concluding an amicable agreement and obstacles to it (Articles 166–169). The vast majority of post-Soviet countries have done otherwise: the procedure for concluding an amicable agreement and restricting the right to conclude it have been defined in other sections of the CPC designed to regulate litigation. Thus, the CPC of Ukraine in Chapter III "Claims" contains Chapter 5, which regulates in detail what is an amicable agreement, the procedure for its conclusion, the procedure for approving an amicable agreement by a court and restrictions on exercising the right to amicable settlement (Article 207). From a legislative point of view, this is not very correct, especially given the fact that some post-Soviet countries directly or indirectly allow the conclusion of an amicable settlement in non-litigation proceedings, which will be discussed below.

It is worth noting another shortcoming of the legislative location of the rules governing the restriction of the right of a party to conclude an amicable agreement. Successful exercise of the right to amicable settlement and restrictions on the exercise of this right are organically interrelated, as one excludes the other. In the presence of such restrictions, the court will not approve the amicable agreement, and therefore the right to conclude it has not been successfully exercised. Here we can draw a parallel with the refusal to initiate proceedings in the case, which precludes the successful exercise of the right to sue. This has led us to believe that it is necessary to adhere to a certain sequence in the legislative location of restrictions on the impossibility of concluding an amicable agreement. In particular, we consider the situation when the legislator, after regulating the terms and procedure for concluding an amicable agreement, determines a warning about the impossibility of exercising the right to an amicable agreement to be correct. This is important in terms of the logic, consistency and completeness of the conciliation procedure based on the amicable settlement. The compact arrangement of these norms in one article or one chapter of the CPC will ensure their adequate application by courts of all instances. However, there are cases in the legislation of post-Soviet countries when the warnings about the impossibil-

ity of concluding an amicable agreement are taken out of the structural unit of the CPC, which describes the procedure for concluding an amicable agreement. Sometimes even it is preceded by illogical. In particular, the CPC of Tajikistan describes the procedure for concluding an amicable agreement in Art. 177, which is located in Chapter 15 "Judicial review", which is part of Section II "Proceedings" of Section II "Trial in the court of first instance". Instead, reservations about the impossibility of concluding an amicable agreement are defined in Part 2 of Art. 43 of the CPC of Tajikistan, which is contained in Section I "General Provisions" [15]. Often, pointing to the warning about the impossibility of concluding an amicable agreement in the general provisions of Section I of the CPC, the legislator then literally repeats them when describing the procedure for concluding an amicable agreement in the court of first instance (eg, Part 2 of Article 39, Article 15310 CPC of Russia [16]) or in all instances (eg, Article 169, Part 5 of Article 394, Part 4 of Article 414 of the CPC of Uzbekistan), which is superfluous in terms of regulatory savings.

Warnings about the impossibility of concluding an amicable agreement may be contained not only in procedural acts. Thus, an amicable settlement may be an independent procedure or part of another conciliation procedure initiated to prevent the consideration of a civil case on the merits. For example, in the Republic of Moldova, an amicable settlement may be concluded based on the results of judicial mediation. Regardless of how the amicable agreement was concluded, Art. 60 (5) of the CPC of Moldova obliges the court before its approval to check whether the provisions of Part 3 of Art. 32 of the Law of Moldova "On Mediation"[17]. That is, there is a blanket norm that sends us to another piece of legislation to check whether there is a restriction on the right to conclude an amicable agreement, in accordance with this law.

Grounds for restricting the right to conclude an amicable agreement and their classification.

The procedural legislation of the post-Soviet countries variously indicates the restriction of the right to conclude an amicable agreement in civil proceedings: from the succinctly vague "terms of the amicable agreement contrary to law" (Part 4 of Article 43 of the CPC of Kyrgyzstan) to a comprehensive list of legal facts the court does not have the right to approve an amicable agreement, ie the subjects in these cases are legally limited in the right to conclude an amicable agreement. In particular, the CPC of Estonia in Art. 430 (3) states that a court does not approve a compromise if it is contrary to good custom or law, violates essential public interests, or cannot be complied with. In family matters, the court is not bound by compromises and should not approve them. The CPC of Moldova also provides a detailed list of grounds for non-approval by a court of a settlement agreement that restricts the right of the parties to conclude it: it contradicts the law or violates the rights, freedoms and legitimate interests of the individual, society or the state (Article 60 (5)). In addition, as mentioned above, before approving an amicable settlement in Moldovan civil proceedings, the court must verify the existence of a reservation on the impossibility of concluding an amicable settlement under the Moldovan Law on Mediation. This law, in particular, does not allow to include in the terms of the amicable agreement conditions that relate to

rights and obligations that the parties can not freely dispose of by concluding an amicable agreement; violate the imperative norms of law, public order and moral norms; are clearly unfair; harm the best interests of the child; violate the rights of third parties who are not involved in the mediation process [18].

However, most post-Soviet countries enshrine in their CPC two grounds that limit the right of the parties to conclude an amicable agreement. In particular, Art. 169 of the CPC of Uzbekistan provides for two cases that do not allow to approve the settlement agreement by the court: 1) contradicts the law; 2) affects the rights and legitimate interests of third parties. Similarly decides the CPC of Tajikistan (Part 2 of Article 43), the CPC of Russia (Part 2 of Article 39), the CPC of Belarus (Part 4 of Article 61), the CPC of Azerbaijan (Article 52.5) [19]. The CPC of Lithuania also provides only two grounds restricting the right of the parties to conclude an amicable agreement (Part 2 of Article 42) [20]. CPC of Kazakhstan three grounds (Part 2 of Article 175, Part 3 of Article 176) [21]. The CPC of Armenia provides four grounds for non-approval of the amicable agreement of the parties (Part 4 of Article 151), as well as the Civil Procedure Law (hereinafter CPC) of Latvia (Article 226 (3)) [22]. A similar situation with the CPC of Ukraine: the terms of the amicable agreement contradict the law or violate the rights or legally protected interests of others, are unenforceable; or one of the parties to the amicable agreement is represented by its legal representative, whose actions are contrary to the interests of the person he represents (Part 5 of Article 207).

However, there are countries in the former Soviet Union, where the CPC does not clearly provide grounds for non-approval of the amicable agreement by the court. In particular, Part 5 of Art. 199 of the CPC of Turkmenistan states that "in case the court does not accept the plaintiff's waiver of the claim, recognition of the claim by the defendant or non-approval of the amicable agreement of the parties, the court makes a decision and continues to consider the case on the merits" [23]. There are no grounds for not approving the amicable agreement in this article, which deals with the specified administrative rights of the parties. However, in Part 3 of Art. 14 of the CPC of Turkmenistan states the following: "The parties may complete the proceedings by concluding an amicable agreement; they may recognize the claims or waive them, unless otherwise provided by law. " If you follow the rules of grammatical interpretation of this regulation, it turns out that the reservation on the other, which may be provided by law applies only to such administrative rights of the parties as waiver of the claim and recognition of the claim, but does not apply to amicable settlement. In our opinion, such a situation does not comply with the principle of legal certainty, as there is no transparency in the procedure for concluding an amicable agreement and conditions are created for the court to abuse its power.

In our opinion, the procedural legislation of the post-Soviet should make a thorough but open list of grounds that do not give the right to conclude an amicable agreement in civil proceedings, which would contain such warnings that are most often repeated in judicial practice. This approach, given that most post-Soviet countries have a high level of corruption, including in the courts (Turkmenistan, Tajikistan, Uzbekistan, Russia, Azerbaijan, Kyrgyzstan, Ukraine,

Moldova, Kazakhstan) [24], minimizes corruption risks in civil proceedings, will not allow the abuse of power.

All restrictions that do not allow to conclude an amicable agreement in the civil process of post-Soviet countries by their nature can be divided into three groups:

1) restrictions concerning the terms of the amicable agreement;

2) restrictions related to the procedure for concluding an amicable agreement;

3) restrictions related to a certain category of civil case considered by the court.

In order to understand these limitations, they should be considered in more detail, relying not only on the legislative model to address this issue, but also on case law and existing legal doctrine in the country.

Restrictions on the right to conclude an amicable agreement concerning its terms.

Restrictions on the terms of an amicable settlement are one of the most common restrictions that prevent the parties from concluding a substantive civil case. The terms of an amicable agreement are the conditions on the basis of which the parties to a civil case reach conciliation. Paragraph 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation "On the preparation of civil cases for trial" states that "it is important to verify the terms of the settlement agreement» [25].

As a rule, the terms of an amicable agreement are constructed in the form of rights and obligations assumed by the parties to the dispute, ie what behavior one party must take towards the other. Thus, the Kazakh court in considering the claim for recognition as a family member and recognition of the right to housing approved an amicable agreement, according to which the plaintiff waives the claims, and the defendant rents a house for 6 months to the defendant with a monthly payment of 35,000 tenge [26]. It is no coincidence that Ukrainian scientist Yu. V. Bilousov notes that "an amicable agreement is an agreement (contract) concluded between the parties and recognized by a court to terminate a dispute between the parties by mutual concessions concerning their rights, obligations and subject matter" [27, p. 138]. However, when discussing the terms of an amicable agreement, it is allowed to go beyond the subject matter of the dispute in the court of first instance (Part 1 of Article 207 of the CPC of Ukraine, Part 3 of Article 1539 of the CPC of Russia).

The legislation of the post-Soviet republics in some cases specifies in detail what the parties must include in the terms of the amicable agreement, and in others warns against the inclusion of which conditions should be avoided because they are unacceptable and will be grounds for non-approval of the amicable agreement. Yes, Art. 167 of the CPC of Uzbekistan states that "the amicable agreement must contain the terms agreed by the parties, indicating the term and procedure for its implementation. Fulfillment of the obligations accepted by the parties under the terms of the amicable agreement should not be made dependent on each other or other events (actions)". Instead of Art. 430 (7) of the CPC of Estonia states that "a compromise may be conditional".

The legislative practice of the post-Soviet countries may coincide with the normative definition of restrictions on the terms of the settlement agreement, and may differ from each other. Virtually all post-Soviet states enshrine the provision that the terms of an amicable agreement must not violate the law. This is a universal caveat, which is aimed at both procedural and substantive law. For example, the CPC of Kazakhstan does not allow the introduction of a suspensive condition in the content of the amicable agreement (Part 3 of Article 176), while the CPC of Armenia prohibits fixing such conditions that do not allow to some extent to determine the amount allocated, the property to be transferred or an action that a party is obliged to take or to include such obligations, the performance of which is conditioned by the performance of the obligation by the other party (Part 4 of Article 151).

Instead, substantive law applicable to the legal relationship of the parties may contain reservations about the impossibility of concluding an amicable agreement. Thus, Russian scholars refer to the following case of non-approval of the amicable agreement by the court: the court of cassation overturned the decision approving the amicable agreement concluded on the claim for invalidation of the decision of the general meeting of founders. civil law contract ". The General Director, as the sole executive body, has no right to change, revoke or invalidate the decisions of the General Meeting, which is the highest governing body of the limited liability company [28]. Or the Ukrainian court did not approve the settlement agreement in the case where the defendant fully acknowledged the debt to the plaintiff and offered him to repay 50% of the share in the authorized capital of a company as repayment of this debt. The motivation of the court was that in this situation there was a hidden civil law agreement on the sale of shares in the authorized capital of the company[29]. The ban on concluding a covert agreement by amicable agreement is based on the fact that there is a certain procedure for concluding certain agreements (notarization, payment of mandatory fees and taxes, etc.), which must be followed by the parties. It is no coincidence that the CPC of Lithuania indicates that the terms of the amicable agreement may not include conditions that violate the mandatory provisions of the law (Part 2 of Article 42). A similar proviso is contained in the Law of Moldova on Mediation (Part 3 (b) of Article 32).

Warnings about the impossibility of concluding a peace agreement, the terms of which violate the rights and interests of the individual, are very common among post-Soviet countries. "Person" means both a person involved in a civil case and having procedural status in it, and an outsider who has nothing to do with the case. In the latter case, it is said that the terms of the amicable agreement affect the rights and legitimate interests of "third parties" (Part 1 of Article 169 of the CPC of Uzbekistan), violate "someone's" rights and legally protected interests (Part 4 of Article 61 of the CPC). Belarus), the rights or legitimate interests of "another person" are violated , paragraph 1, part 5 of Article 207 of the CPC of Ukraine, part 2 of Article 39 of the CPC of Russia, etc.). The fact that these entities are not involved in civil proceedings in some post-Soviet countries has been clarified by the country's highest judicial body. Thus, paragraph 24 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the application of

civil procedural law in cases before the court of first instance" states "if the terms of the amicable agreement не do not violate the rights, freedoms or interests of others (not parties) , the court recognizes the amicable agreement and closes the proceedings"[30].

With regard to the violation by the terms of the amicable agreement of the rights and interests of persons who are participants in the civil case, the civil procedural legislation of the post-Soviet countries addresses this issue in different ways. In particular, paragraph 2 of Part 5 of Art. 207 GIC of Ukraine gives the court the opportunity not to approve the amicable agreement, if one of the parties to the amicable agreement is represented by its legal representative, whose actions are contrary to the interests of the person he represents. The point is that the conduct of the legal representative in determining the terms of the settlement agreement will not be in the interests of his ward. As legal representation in the civil process of Ukraine is established in relation to minors and minors, incapacitated and limited in capacity (parts 1-2 of Article 59 of the CPC of Ukraine), these entities are not entitled to control the behavior of the legal representative. Moreover, in some cases they are not even present in the courtroom. That is why it is the court's responsibility to monitor the conduct of the legal representative. If the court determines that the terms of the amicable agreement will violate the rights and interests of the person represented in the civil case by the legal representative, the court shall not approve such an agreement. He must continue the civil proceedings further. Thus, a lawsuit for deprivation of parental rights was filed in one of the Ukrainian courts, which was not satisfied by the court of first instance. However, at the appellate level, an amicable settlement was filed, according to which the defendant acknowledges the claim for deprivation of parental rights in respect of the son and understands all the consequences of deprivation of parental rights, and the plaintiff undertakes not to impose any claims on the defendant property requirements for the maintenance of the son. The court did not approve the settlement agreement because it did not meet the interests of the child [31]. Similarly, Moldovan law, which prohibits the inclusion in the settlement agreement of conditions that would harm the best interests of the child (Part 3 (d) of Article 32 of the Moldovan Law on Mediation).

But not only the private interests of either the party to the case or an outsider are a warning to the conclusion of an amicable agreement in civil proceedings. Some post-Soviet countries attach importance to the observance of public or state interests, which should not be violated by the terms of the peace agreement. In particular, the CPC of Estonia states that it is inadmissible to violate "substantial public interests" (Article 430 (3)), the CPC of Lithuania does not violate "public interests" (Part 2 of Article 42) and the CPC of Moldova »(Part 5 of Article 60). It is necessary to pay attention to the certain value of these concepts, which allow the court to decide whether the public or state interest has been violated in a particular case. Lithuanian Professor Vytautas Nekrosius, commenting on the situation with the category of "public interest" in the Lithuanian civil process, notes that in this situation it becomes obvious not only the mystification of the category of public interest, but also the autonomy of the parties and the

principle of dispositiveness. Thus, the law does not guarantee that the court and the state will not abuse these great rights [32, p. 124].

Procedural restrictions on the right to conclude an amicable agreement.

Restrictions related to the procedure for concluding an amicable agreement in civil proceedings are the second largest group of restrictions that create obstacles to the exercise of the right to conclude an amicable agreement. The procedure for concluding an amicable agreement in civil proceedings is regulated by the rules of substantive and procedural law. This corresponds to the thesis that this legal institution has a dual or complex nature. Since by its material nature a settlement agreement is a contract, the procedure for its conclusion must correspond to the procedure for concluding civil law contracts. The civil law of the post-Soviet countries clearly sets out the general conditions for the veracity of the treaty, non-compliance with which gives the court grounds to declare such treaties invalid. For example, the Civil Code (hereinafter CC) of Moldova in Chapter II of Section III defines the terms of validity of agreements [33]. Yes, Art. 312 (2) of the Civil Code of Moldova indicates that consent is valid if it comes from a person who is in common sense, expressed with the intention to create legal consequences and is not vicious. The Civil Code of Ukraine stipulates that "essential conditions of the contract are the conditions on the subject of the contract, conditions defined by law as essential or necessary for contracts of this type, as well as all those conditions on which at the request of at least one party must be agreed." (Part 1 of Article 638) [34]. In the context of the topic of our study, this information is important because non-compliance with the procedure for concluding civil agreements (contracts) will be grounds for the court not to approve the settlement agreement in civil proceedings. Despite the importance of this, very few procedural codes of post-Soviet countries mention the need to comply with civil law when concluding amicable settlements. Yes, Art. 430 (8) of the CPC of Estonia states that "a compromise may be revoked and its nullity may be based on the grounds specified in the Law on the General Part of the Civil Code". As you know, a settlement agreement in Moldova may be concluded as a result of a judicial mediation procedure, which can be initiated in the process of considering a civil case in court. Moldova's Law on Mediation states that an amicable agreement must comply with the conditions of validity provided for in this Law, the Civil Code and other legislative acts (Article 32 (2)). At present, a number of post-Soviet states are quite scrupulous in their procedural legislation determining the procedure for concluding an amicable agreement. For example, the Code of Civil Procedure of Russia extensively regulates the form and content of the amicable agreement (Article 1539), the procedure for its approval by the court (Article 15310). Thus, the amicable agreement is drawn up and signed in the number of copies, which exceeds by one copy the number of persons who concluded the amicable agreement. One of these copies is attached by the court that approved the amicable agreement to the case file (Part 6 of Article 1539).

If the specified procedure for concluding an amicable agreement in procedural law is violated, it will not lead to the desired legal effect: the court will not approve the amicable agreement and will continue to consider the case further.

The procedural legislation of some post-Soviet countries imposes its own, sometimes quite specific, requirements on the procedure for concluding an am-

icable agreement. Thus, before concluding the case by concluding an amicable agreement, the parties must provide a certificate of public law restriction, which confirms that the subject of the dispute (thing, intangible property) is not registered public law restriction, and contains data valid at the time of the parties amicable agreement (Part 2 of Article 218 of the CPC of Georgia). The Latvian CPC states that an amicable settlement may be approved by a court without the participation of the parties if the amicable settlement is notarized and includes notifications from the parties that they are aware of the procedural consequences of approving the amicable settlement (Article 227 (3)); in cases arising from the right to custody and communication, the amicable agreement is approved after the court requests on its own initiative the opinion of the relevant orphan court or the invitation of its representative to participate in the hearing (Article 2446).

There is a widespread warning among post-Soviet countries about the impossibility of exercising the right to an amicable settlement, which is relevant to the procedure for concluding it: a warning about the subject. These entities can be divided into two groups: entities that are completely incapable of concluding an amicable settlement in civil proceedings and entities that are relatively incapable of such actions.

Entities that under no circumstances have the right to personally conclude and sign an amicable agreement in civil proceedings include such entities as a minor (usually a minor under the age of 14) and an incapacitated party or a third party claiming independent requirements (Article 72 (3) of the CPC of Latvia, Part 5 of Article 37 of the CPC of Russia, Part 4 of Article 59 of the CPC of Belarus, Article 49.4 of the CPC of Azerbaijan, Part 5 of Article 39 of the CPC of Kyrgyzstan, Article 58) CPC of Moldova, etc.); prosecutor in civil proceedings, body of state power or local self-government, who appealed to the court in the interests of others (Part 1 of Article 57 of the CPC of Ukraine, Part 2 of Article 45, Part 2 of Article 46 of the CPC of Russia, Part 1 of Article 51 CPC of Uzbekistan, Part 1 of Article 129, Part 3 of Article 130 of the CPC of Turkmenistan, Part 5 of Article 54 of the CPC of Kazakhstan). The inability of public authorities to conclude an amicable agreement in the interests of others is due to the fact that they do not have a substantive interest, ie they are not the subject of the disputed substantive legal relationship, which is the subject of litigation. Without being such an entity, the prosecutor, public authority or local government is not able to transform the relationship in such a way that it effectively meets the interests of the party. Moreover, the personal fulfillment of the terms of the amicable agreement will not be entrusted to them, but to the party in whose interests they appealed to the court.

Entities that are relatively incapable of signing an amicable agreement in civil proceedings, ie persons who, as a general rule, do not have such an opportunity, but under certain conditions it appears in them, include contractual representatives of the parties and third parties who make independent claims. Thus, the vast majority of post-Soviet countries allow a representative to conclude an amicable agreement if the power of attorney on the basis of which they entered into a civil case explicitly states the representative's right to conclude an amicable agreement on behalf of the person in whose interests they went to court. Uzbekistan, Article 134 of the CPC of Turkmenistan, Part 2, Article 56 of the CPC

of Tajikistan, Part 1, Article 54 of the CPC of Russia, Part 1, Article 81 of the CPC of Moldova, Article 86 (2) of the CPC of Latvia, Part 2, Article 63 CPC of Kyrgyzstan, Part 2 of Article 79 of the CPC of Belarus, Part 1-2 of Article 56 of the CPC of Armenia, Article 74.2 of the CPC of Azerbaijan, Part 1, 3 of Article 60 of the CPC of Kazakhstan, Part 1 of Article 98 of the CPC of Georgia). Otherwise, such a representative does not have such a right. That is why the court before concluding an amicable agreement in civil proceedings checks the authority of the representative to determine whether he has permission for such actions. Instead, the CPC of Ukraine decides differently with the contracting representative: he is authorized on behalf of the person he represents to perform any procedural actions, including concluding an amicable agreement, if such conduct specifically in the power of attorney or warrant issued is not prohibited (Part 2 of Art. 64). A similar rule applies under the CPC of Estonia (Article 222 (1), Article 223).

Interestingly, in some countries, the same entity that has restrictions on the conclusion of an amicable agreement may belong to different groups. In particular, some post-Soviet states categorically prohibit a third party who does not make independent claims to conclude an amicable agreement in civil proceedings (Part 7 of Article 38 of the CPC of Armenia, Article 80 (2) of the CPC of Latvia, Part 6 of Article 53 of the CPC of Ukraine, Part 1 Article 126 of the CPC of Turkmenistan, Article 91 of the CPC of Georgia). While other post-Soviet states under certain conditions allow the conclusion of an amicable agreement by a third party who does not make independent claims. Thus, Part 3 of Art. 49 of the CPC of Uzbekistan states that in case of recognition of the claims by a third party who does not declare independent claims on the dispute, when the plaintiff's rights are violated as a result of his actions or inaction, the court has the right to decide on third party. Russia's Code of Civil Procedure provides for the possibility of a third party to conclude an amicable agreement without independent requirements, if they acquire rights or impose obligations on them under the terms of the amicable agreement (paragraph 2, part 1 of Article 43). We believe that the latter approach is more noteworthy because it reduces the burden on the court: if a third party without independent claims becomes a party to an amicable agreement, the provisions of which will be complied with by all parties, it will not be sued in the future.

Restrictions on the right to conclude an amicable agreement in certain categories of civil cases.

Restrictions related to a certain category of civil case before the court are not common in the current CPC of post-Soviet countries. The amicable settlement as a substitute for a court decision makes it possible to complete the proceedings in not all categories of civil cases. There are cases of restriction of the right to an amicable agreement, not related to its subject or procedure. These cases are related to the category of civil case, ie the material claim with which the person applied to the court. Thus, the CPC of Estonia states that the family court is not bound by compromise and is not obliged to approve them (Article 430 (3)). The CPC of Latvia prohibits concluding an amicable agreement in the following matters: 1) in disputes related to amendments to the register of civil status records; 2) in disputes related to the property rights of persons under guardianship or

trusteeship; 3) in disputes over immovable property, if among the participants there are persons whose rights to purchase immovable property or property are limited in the manner prescribed by law (Article 226 (3)).

In some cases, the legislation of the post-Soviet countries clearly expresses its warning about the impossibility of concluding an amicable agreement in a certain category of civil case, and in others – no, but this follows from the essence of civil procedural law. Thus, it is considered that the amicable agreement is a legal institution, the rules of which are relevant to the consideration of civil lawsuits, where the decision of the parties replaces the court decision on the dispute over the right. Hence, the legal personality of the parties to the non-litigation procedure does not include the right to conclude an amicable agreement. For example, the CPC of Ukraine explicitly prohibits the conclusion of an amicable agreement during the consideration of separate proceedings (Part 5 of Article 294). While the CPC of Russia does not have such a normative clause, it follows from the nature of separate proceedings, which prohibits civil law agreement on an issue to be answered only by a court (in particular, on the adoption of a child – Chapter 29 of the CPC of Russia). That is why Russian scientists warn about the impossibility of concluding an amicable agreement in separate proceedings [35, p. 188].

At the same time, some post-Soviet states allow the conclusion of an amicable agreement in certain cases of separate proceedings. Thus, the Latvian CPC includes cases of insolvency of enterprises or business associations (Chapter 46), which determine the actions of the court after declaring them insolvent. One of such actions is the approval or cancellation of the amicable agreement (Articles 351-352 of the CPC of Latvia). Similarly resolves the issue of the CPC of Estonia, which contains part 11 "Non-litigation proceedings", where in Art. 477 (6) states that a compromise in non-litigation proceedings may be entered into by the parties to the proceedings if they are able to dispose of the right which is the subject of the proceedings. In particular, non-litigation cases under the CPC of Estonia include such cases as declaring a person dead, appointing a guardian for an adult with disabilities, placing a person in a closed institution, taking measures to preserve the inheritance, recognition and enforcement of foreign courts, etc. (Article 475).

Most post-Soviet countries recognize this type of non-litigation procedure as injunction proceedings. In this type of proceedings, when the case is in court, it is impossible to conclude an amicable agreement, because the parties do not see each other and according to the procedure of proceedings are not summoned to court. It is not provided by law. It is obvious that due to such a legislative procedure for considering cases of injunction proceedings, the parties cannot exercise the right to amicable settlement in court. Instead, nothing prevents further participants in the injunction proceedings to conclude an amicable agreement at the stage of execution of the court order [36, p. 845].

It should be noted that there are categories of lawsuits where it is not possible to conclude an amicable agreement. In particular, the Latvian CPC indicates that in cases of divorce or invalidity of marriage, the amicable agreement of the parties is allowed only in disputes related to family law (Article 241 (1)). Under such disputes under Part 1 of Art. 238 CPC of Latvia understand disputes: 1)

about appointment of care; 2) on the exercise of the right to communicate; 3) on child support; 4) funds to ensure the former level of welfare or nutrition of the spouses; 5) on joint housing of the family and household items or personal use; 6) on the division of property of the spouses (also in the case of third parties).

Correspondence proceedings are a type of litigation in civil proceedings in most post-Soviet countries (Chapter 11 of Chapter III of the CPC of Ukraine, Chapter 28 of Chapter VI of the CPC of Belarus, Chapter XXIV of Chapter IV of the CPC of Georgia, etc.). Concluding an amicable agreement in such cases is also impossible due to the absence of one party and the procedure for their consideration.

The existence of certain categories of civil cases, where restrictions on the impossibility of exercising the right to amicable settlement is justified by the fact that each post-Soviet country determines in which case the principle of dispositiveness should be limited and values should be determined in which the whole society is interested in judicial protection.

Conclusion. Thus, a review of post-Soviet legislation on the enshrinement of restrictions on the right to conclude an amicable agreement shows that the vast majority of countries address this issue in the same way, especially with regard to the scope of these restrictions. To some extent, this is due to the common Soviet past, where all-Union legislation was first developed, which was in fact later duplicated by the union republics (at present, this practice has been partially duplicated by some post-Soviet Central Asian republics, including Kazakhstan), and as well as unification processes taking place in the post-Soviet space. However, each post-Soviet country has its own national differences on the proviso that it is impossible to conclude an amicable agreement in a certain category of civil matters, showing the limits of dispositive freedom.

It should be noted that a number of post-Soviet countries that are members of the European Union (Moldova, Estonia) have a fairly smooth system of grounds that do not allow the court to approve an amicable settlement in civil proceedings. Such a situation allows for a more balanced and transparent entry into the sphere of autonomy of the parties to a civil case, without abusing the judiciary. Ukraine should take this legislative practice into account, taking into account its European integration processes. However, given the relatively high level of corruption that persists in Ukrainian courts, there are no grounds to limit the right to conclude an amicable agreement through the use of valuation concepts.

As stated at the beginning of this article, an amicable settlement in civil proceedings is seen as an alternative to the merits of the case. Therefore, Ukraine should borrow the experience of those countries that allow a third party without independent requirements to the subjects of the right to conclude an amicable agreement. Currently, the CPC of Ukraine prohibits this party to enter into an amicable agreement. The abolition of this formal prohibition will result in the fact that those claims that may be filed in the future by filing a recourse action in a new civil case will not be filed, which, in turn, will reduce the burden on the court.

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