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# Igor Vasilyevich Kernadzhuk – Candidate of Jurisprudence, docent of the criminal law and criminology chair of the Far-Eastern legal institute of the Ministry of Internal Affairs of Russia (Khabarovsk). *E-mail: ugpravodvui@mail.ru*

# Legal nature of suspended condemnation

# *In the present article the questions connected with the nature of suspended condemnation are considered. The legal nature of suspended condemnation hasn't found accurate reflection in the criminal code of the Russian Federation. The community of suspended condemnation with punishment is shown that it provides the purposes of punishment and contains a coercion element. The author adheres to a position that suspended condemnation is a specific form of a parole from punishment. At the enforcing of suspended condemnation and parole the court considers the character and degree of public danger, existence of the softening and aggravating circumstances. Similarity of suspended condemnation and parole is expressed in: similarity of punishments to which they are applied; release from punishments; similarity of a trial period and a term of unexpired part of punishment; accounting of the identity of the convict and establishment of duties; to cancellation of a trial period and a term of unexpired part of punishment.*

# Правовая природа условного осуждения

*В настоящей статье рассматриваются вопросы, связанные с природой условного осуждения. Правовая природа условного осуждения не нашла четкого отражения в УК РФ. Общность условного осуждения с наказанием проявляется в том, что оно обеспечивает цели наказания и содержит элемент принуждения. Автор придерживается позиции, что условное осуждение – это специфическая**форма условно-досрочного освобождения от наказания. При применении условного осуждения и условно-досрочного освобождения суд учитывает характер и степень общественной опасности, наличие смягчающих и отягчающих обстоятельств. Сходство условного осуждения и условно-досрочного освобождения выражается в: аналогичности наказаний, к которым они применяются; освобождении от наказаний; сходстве испытательного срока и срока неотбытой части наказания; учете личности осужденного и установлении обязанностей; отмене испытательного срока и срока неотбытой части наказания.*

# *Keywords:* *suspended condemnation, parole, trial period, term of unexpired part of punishment, cancellation of suspended condemnation, punishment, character and degree of public danger.*

# *Ключевые слова:* *условное осуждение, условно-досрочное освобождение, испытательный срок, срок оставшейся не отбытой части наказания, отмена условного осуждения, наказание, характер и степень общественной опасности.*

The legal nature of conditional condemnation hasn't found accurate reflection in the criminal code of the Russian Federation (further – CC RF). Suspended condemnation though is in the section III "Punishment" of CC RF, but, first, isn't included in the system of punishment (art. 44 of CC RF) where the applied types of punishments are strictly limited. Secondly, it is placed not in the chapter 9 "Concept and purposes of punishment. Types of punishments", and is in the chapter 10 "Infliction of punishment". In this regard, judgments of suspended condemnation as about a kind of punishment are pointless. The dual position of the legislator doesn't allow define the legal nature of suspended condemnation that causes disputes among the scientists.

Among the scientists there is a position defining suspended condemnation as a special type of punishment [1, p. 59]. A.K. Muzennik, V.A. Utkin and O.V. Filimonov treat suspended condemnation as a form of realization of criminal liability which is expressed in release of the convict from real serving of the imposed sentence under a certain condition [2, p. 10]. M.D. Shargorodskiy claimed that conditional condemnation should be considered as a special order of serving sentence which is that the sentence isn't carried out if the convict during a certain term doesn't commit new, not less serious crime [3, p. 513]. In I.Ya. Kozachenko’s opinion, the essence of suspended condemnation consists in not carrying out of the sentence appointed by the court (in full or his corresponding part) provided that the convict during the trial period established by the court with his behavior will prove the improvement [4, p. 493]. A.V. Naumov represents suspended condemnation as a special form of release of the guilty person from the real serving of sentence imposed by the court [5, p. 433]. Anyway, while discussions are conducted, scientists haven't come to a consensus of rather legal nature of suspended condemnation.

The general in suspended condemnation and punishment is shown that it provides the purposes of punishment and contains a coercion element however, in our opinion it is insufficient argument in favor of the fact that suspended condemnation is one of the types of punishment more likely it is one of the types of parole.

To clear the position taken by us, we will compare the order of application of suspended condemnation and application of parole. According to the article 73 of CC RF, "… if, having appointed corrective works, restriction on military service, keeping in the disciplinary military unit or imprisonment for a period of up to eight years, the court comes to a conclusion about a possibility of correction of the convict without the real serving sentence, it decides to consider the imposed sentence suspended". At the parole enforcing the person is exempted from such types of punishment as keeping in the disciplinary military unit, forced labor or imprisonment. Suspended condemnation at infliction of punishment in the form of imprisonment is applied only in a case if the term of this punishment doesn't exceed eight years whereas the parole from serving sentence in the form of imprisonment is possible even if it is inflicted for life.

First, a number of punishments enforced at suspended condemnation and parole coincides, in particular keeping in the disciplinary military unit or imprisonment. Unclear is the legislator's position about impossibility of enforcing of parole from such types of punishment as corrective works and restriction on military service which, in essence, are more lenient punishments, than imprisonment, keeping in the disciplinary military unit or forced labor.

Secondly, at the infliction of punishment the court in one stage decides to consider it suspended, i.e. the court enforces a special type of parole to the person. This release is expressed that the person didn't serve the imposed sentence and didn't prove improvement during its execution that the further execution of the punishment is not expedient, i.e. the objectives of punishment are already achieved, and the court can enforce parole to the person. At suspended condemnation the court studies the materials characterizing identity of the guilty person and on the basis of these materials and independent studying of identity of the guilty person has to come to a conclusion about a possibility of improvement of the person without real serving sentence.

Enforcing of suspended condemnation is possible only if the court considers that the objectives of the sentence imposed by it can be achieved without its real execution. Implementation of the purposes of punishment begins and in a certain measure is reached still before the court decides to consider the imposed sentence suspended, than and the possibility of achievement of the objectives of punishment at suspended condemnation is determined.

Thirdly, the resolution to consider the punishment suspended with establishment of a trial period doesn't mean yet that the punishment won't be enforced that the court completely exempts the person from punishment. The convention gives to the person a prospect of release from punishment in a final phase, real enforcing by the court of the imposed sentence is possible at any moment of a trial period if the requirements imposed to the convict are violated. At a parole the person is released for the term of unexpired part of punishment on the same bases, as at the suspended condemnation and as well as at the suspended condemnation violation of the set restrictions can lead to the parole cancellation.

Fourthly, the court considers the character and degree of public danger, and also the softening and aggravating circumstances both at infliction of punishment, and at a possibility of infliction of suspended condemnation, i.e. these circumstances and a sign are considered by the court twice. At the parole enforcing the court considers behavior of the convict, his relation to the study or work, the available encouragement and penalties, the relation of the convict to the committed act whether the convict in whole or in part has compensated the damage caused by a crime or has otherwise smoothed down the harm. Also the court considers the conclusion of administration of the correctional institution about expediency of enforcing to the person of parole (which not always is objective). Compensation of the harm done by a crime is one of the main conditions of enforcing of suspended condemnation.

Fifthly, the court exempts the person from the serving sentence under certain duties: not to change permanent residence, work, study; not to visit certain places; to receive medical treatment for alcoholism, drug addiction, toxicomania or a venereal disease; to work or find a job; to continue training in the general education organization. The court can assign also the other duties which will promote correction of the person. The court assigns just the same duties also at the parole enforcing.

Sixthly, the court establishes to the person a trial period during which the person has to prove by his behavior the correction. Trial period is: first, time period necessary for the control of validity of a judgment about suspended condemnation and organization of special control of behavior of the condemned; secondly, it is the term before which expiration realization of the imposed criminal penalty is possible (the same realization of the imposed sentence is possible also in the period of unexpired part of the term at the parole enforcing). The convict to whom parole is enforced also has to prove validity of a judgment that he doesn't need further serving sentence, and concerning him as well as at suspended condemnation the control by specialized government body is exercised. According to p.1 of the article 74 of CC RF, under correction of the condemned compensation in whole or in a part of the harm done by a crime, lack of the disorderly conduct, execution assigned to him by the court of a duty and when the person doesn't disappear from the control are understood.

Seventhly, if the convict during a trial period has evaded from the indemnification caused by a crime or has made disorderly conduct in which he has been brought to trial, or systematically didn't fulfill the duties assigned to him by the court, or has disappeared from the control, then the court on representation of the body exercising control can pass the decision on cancellation of suspended condemnation and to enforce real execution of the imposed sentence. If the person serving sentence hasn't compensated the harm in whole or in a part, then the parole isn't enforced.

The legal nature of suspended condemnation consists in suspended release of the guilty person from the real serving of the sentence imposed by a sentence of the court. Suspended condemnation can be considered as a special order of enforce by the court of parole from the imposed sentence which is realized: first, without the real enforcing of the imposed sentence; secondly, the sentence for a certain term is imposed to the person; thirdly, two types of the term – a trial period and a term of the imposed sentence are specified in a sentence; fourthly, on condition of performance by the person of the duties assigned to him and observance of the set restrictions during the certain trial period established by a sentence of the court, this punishment won't be enforced; fifthly, the person doesn't serve sentence, and is exempted from it directly in the courtroom where the moment of early release is postponed for the sentencing moment.

Thus, suspended condemnation should be referred to a specific form of parole from the punishment. On the basis of the above told, it is necessary to move suspended release from the chapter 10 "Infliction of punishment" of the section III "Punishment" in the chapter 12 "Release from punishment" of the section IV "Release from criminal liability and from punishment".

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