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To a question of duration of a trial period in suspended condemnation

Determination of the sizes of a trial period at suspended condemnation causes many difficulties in the court. It is difficult to underestimate the value of a trial period in reformation of the convict. Its essence is that the time during which he has to prove the reformation is provided to the convict, and its feature is the possibility of real departure of punishment in a case of violation of the duties established by the court. The penalty of suspended condemnation is expressed in duration of a trial period and in the duties assigned to the convict by the court. According to the legislation, duration of a trial period depends on the personality guilty of commission of a crime. The analysis of jurisprudence shows that the persons who have committed crimes of small or average weight have to prove the reformation much longer, than the term of the imposed sentence, and the persons who have committed more serious crimes in the less short terms have to prove the reformation. Excessively the short trial periods lead to the fact that to the convict unreasonable softness from the state is shown. It involves impossibility of achievement of the objectives of criminal penalty and even if the objectives are achieved, they don't receive the due fixing in behavior of the person that leads subsequently to the repeated commission of crimes. In the present article the influence of a type of the imposed sentence and its size on duration of a trial period at suspended condemnation is investigated.

К вопросу о длительности испытательного срока в условном осуждении

Определение размеров испытательного срока при условном осуждении вызывает немало затруднений у суда. Значение испытательного срока в исправлении осужденного сложно недооценить. Сущность его заключается в том, что осужденному предоставляется время, в течение которого он должен доказать свое исправление, а его особенностью является возможность реального отбытия наказания в случае нарушения установленных судом обязанностей. Кара условного осуждения выражается в длительности испытательного срока и в возложенных на осужденного судом обязанностей. В соответствии с законодательством, длительность испытательного срока зависит от личности виновного в совершении преступления. Анализ судебной практики показывает, что лица, совершившие преступления небольшой или средней тяжести, должны доказывать свое исправление гораздо дольше, чем срок назначенного наказания, а лица, совершившие более тяжкие преступления, в менее короткие сроки должны доказать свое исправление. Чрезмерно короткие

испытательные сроки приводят к тому, что к осужденному проявляется необоснованная мягкость со стороны государства. Это влечёт за собой невозможность достижения целей уголовного наказания, и даже если цели его достигнуты, они не получают своего должного закрепления в поведении лица, что впоследствии приводит к повторным совершениям преступлений. В настоящей статье исследуется влияние вида назначенного наказания и его размера на продолжительность испытательного срока при условном осуждении.

Keywords: *suspended condemnation, punishment, punishment purposes, duration of a trial period, cancellation of suspended condemnation, identity of the guilty person, criminal record.*

Ключевые слова: *условное осуждение, наказание, цели наказания, продолжительность испытательного срока; отмена условного осуждения, личность виновного, судимость.*

Achievement of the objectives of punishment at suspended condemnation in many respects depends on the identity of the convict, the duties assigned to him and duration of a trial period. Duration of a trial period at suspended condemnation causes many disputes in the criminal and legal science. Considering suspended condemnation as a special, specific type of parole [2, p. 124], we will try to determine duration of a trial period and its value in reformation of the suspended condemned.

Establishment of a trial period at suspended condemnation is not the right, but an obligation of the court. In the period of a trial period the convict is considered an offender. T.G. Veretennikova determines a trial period as the time period necessary for the check of validity of a judgment about suspended condemnation and the organization of special control of behavior which is condemned [1, p. 16]. The trial period at suspended condemnation, according to R. V. Smayeva, is the term of realization of criminal liability [3, p. 23]. We agree with these judgments as they quite supplement each other. At conscientious performance by the condemned the duties assigned to him and at achievement of the own high-quality reformation after a trial period the imposed sentence isn't carried out. The criminal record of the person is settled, therefore, all criminal legal relations stop, and, thus, the criminal liability concerning this person is completely realized.

The trial period makes corrective impact on the convicts. During this period the behavior of the convict is controlled by the specialized government bodies, in particular by the criminal and executive inspectorates and the district police officers. Threat of reduction of punishment in the form of imprisonment in execution in the case of violation of conditions of the trial period makes the constraining impact on the guilty person. The term "trial" means that suspended condemnation represents the certain test which is expressed performed by the duties assigned by the court and stimulation of the right obedient behavior i.e.

leads to the reformation without the real term of serving sentence in the form of imprisonment.

The sense of trial period consists that the time is provided to the convict in order that the active work and participation in public life to prove the reformation without real serving sentence in the form of imprisonment.

The feature of trial period at suspended condemnation is that it unites a threat and a promise of real application of the imposed sentence at violation of the conditions established by the court or at commission of a repeated crime. If the person has committed a new crime during a trial period, then the issue of cancellation of a trial period is resolved by the court. In case of commission of heavy or especially serious crime during the specified period the sentence is imposed by the rules provided by the article 70 of the Criminal Code of Russian Federation (further CC of RF).

The penalty at suspended condemnation if is present, then at the minimum volume, in comparison with the punishment. All deprivations or restrictions of any rights of the condemned consist available the duties assigned to him and the criminal record existing during a trial period.

At imposition of a sentence by the court and the resolution to consider it suspended the personality guilty of commission of a crime is considered four times: at the punishment choice; purpose of the term of punishment; at the resolution to consider the punishment suspended; and also at determination of the size of a trial period. Purpose of the size of a trial period depends on the term of the imposed sentence in the form of imprisonment, and also on a set of specific features of personal qualities of the guilty person.

Studying of the identity of guilty person by the court occurs according to the case papers (which in 81,6% of cases aren't true for the different reasons: from inability to collect and analyze the available information to the certain transactions during the investigative actions) and on the materials which are provided by the lawyer (as a rule, in 96,7% of cases they are positive and only in exclusive – have uncertain character). Studying of the identity of the guilty person happens also during the judicial proceedings (in the courtroom the convict in the most cases acts as the respectable citizen who has realized the fault and repentant the committed crime). Except the overcoming of these difficulties, when studying the personality guilty of commission of a crime the judge as the person can be mistaken and come to a wrong conclusion that will lead to the unreasonable purpose of more lenient punishment.

The purposes at suspended condemnation are: achievement of reformation of the person, and, in higher degree in comparison with the really served sentence which is reached concerning the particular person without the real application of punishment; and also economy of repressions from the state.

The extent of achievement of this purpose depends mainly on the data characterizing the suspended condemned as the personality. The legislator doesn't establish a problem of achievement of this purpose in the short terms. Also the legislator doesn't talk about the quality of reformation, and on the contrary, even provides a possibility of commission by the person of a crime on imprudence or

deliberate crime of the small or average gravity in this case the question of cancellation of a trial period is resolved by the court.

If the court imposes a new sentence and decides to consider it suspended, and determines a trial period, then each trial period flows independently. When studying the persons being on the account in criminal and executive inspection the persons having three and more trial periods flowing at the same time have been found, and concerning the minor L. seven trial periods flew at the same time. All trial periods are provided for the offences of small and average gravity.

If the basis for appointment of any punishments which are contained in the part 1 of the article 73 of CC of RF, and determination of its size forms the circumstances having the legal value, then, first of all, set of all personal qualities of the guilty person forms the basis of duration of a trial period.

Studying of jurisprudence shows that at assignment of punishment in the form of imprisonment for a period of up to one year or more lenient punishment the courts, as a rule, impose a trial period equal to the punishment term in 31,1% of cases, and in 66,5% of cases the trial period exceeds the term of imposed sentence, and only in 2,4% of cases the trial period is less than the term of imposed sentence. At the purpose of imprisonment for the term of over one year the trial period equal to the term of punishment is appointed in 27,3% of cases, and in 17,4% of cases the trial period exceeds the imprisonment term, and in 55,3% of cases the trial period is less than the term of imprisonment.

Such regularity says that the persons who have committed crimes of small or average gravity have to prove the reformation much longer, than the term of the imposed sentence, and the persons who have committed more serious crimes in less short terms, than the term of imposed sentence (in the form of imprisonment), have to prove the reformation. From legislative logic it turns out: the more serious crime was committed by the person, the less time is necessary for his reformation.

The term of imposed sentence and the gravity of committed crime directly have to influence the duration of trial period at condemnation of the person to imprisonment. According to the part 3 of the article 73 of CC of RF if the court imposes the sentence in the form of imprisonment for up to one year, the trial period has to be not less than six months and no more than three years, and in the case of imprisonment for the term of over one year – not less than six months and no more than five years. As it is possible to understand from the provisions, the trial period and its duration are rigidly coordinated to the term and the sentence imposed by the court for serving it suspended, but in this case the gravity of committed crime isn't considered.

Duration of a trial period has to depend on the gravity of committed crime: the more it heavy, the more time is required for reformation of the guilty person. The person who has made the act of small gravity will need much less time and the own efforts for reformation, than the guilty in serious crime. Establishing the long trial periods to the convicts to imprisonment for a period of up to one year for commission of the crimes of small gravity, the courts thereby show unreasonable severity to the guilty person.

At suspended condemnation the role of punishment is reduced to the intimidation of the convict which is expressed in a possibility of real execution of the imposed sentence and the prevention of offenses. Therefore it is fair to speak about the direct dependence of extent of the given intimidation on punishment term, in the form of imprisonment. The punishment which isn't applied conditionally is appointed in full accordance with the norms regulating the general beginnings of the infliction of punishment.

We will try to determine duration of a trial period depending on the size or term of the imposed sentence in the form of imprisonment now. The minimum trial period established to the p. 3 of the art. 73 by CC of RF in six months is too small because during this time the person doesn't manage to comprehend completely the act made by him, its public danger and crime and furthermore to realize the illegal behavior and to rethink it for reformation and further non-execution of crimes. And the government supervising bodies are also not able to study in the six-months time the personality having the suspended condemnation and to provide the appropriate educational impact on him, therefore, to provide appropriate reformation of the convict. At the same time, the short trial period makes at the convict the impression of impunity for the committed crime.

Excessively short trial periods can lead to the fact that the condemned for heavy and especially serious crime too short trial period will be appointed, and, thereby, unreasonable softness to the guilty person will be shown. Excessively short trial period loses the educational value, turning, in essence, into the formality, it is inconvenient and the fact that the educational work which is carried out with him doesn't receive due fixing in behavior of the person. As a rule, the desirable result comes at the longer terms. Therefore the size of trial period equal to the amount of punishment in the form of imprisonment is more acceptable. The trial periods established by the legislator lead to the absence of unity in jurisprudence. The trial period established to the convict to imprisonment for a period of up to one year, and the trial period established to the convict to imprisonment for the term of over one year very often coincide by the sizes or slightly differ that once again confirms the legislative equalizing of the persons who have committed crimes of different gravity.

If the court taking into account the personality determines the type and the size of punishment and comes to a conclusion that the imposed sentence will be considered suspended, then the trial period has to be equal to the term of the imposed sentence. For elimination of the disparate existing in jurisprudence it is necessary to establish the full compliance of duration of a trial period to the term of the imposed sentence and to fix this situation in the law.

On the basis of the above I consider necessary to state:

Part 3 of the article 73 of CC of RF it is necessary to state in the following edition: "At infliction of suspended condemnation the court establishes a trial period during which the suspended convict has to prove the reformation. In the case of infliction of punishment in the form of corrective works or restriction on military service the trial period has to be not less than six months and no more than the term of imposed sentence. In a case of infliction of imprisonment the court

establishes a trial period equal to the term of the imposed sentence if the term of the imposed sentence in the form of imprisonment makes less than six months, then the trial period is established not less than six months and no more than one year. The trial period is estimated from the moment of adjudgement";

Part 4 of the article 74 of CC of RF in the following edition: "In a case of commission by the suspended condemned during a trial period of a crime on imprudence the court makes decision of cancellation or preservation of suspended condemnation";

Part 5 of the article 74 of CC of RF in the following edition: "In a case of commission by the suspended condemned during a trial period of a deliberate crime the court cancels suspended condemnation and imposes him the sentence by the rules provided by the article 70 of CC of RF. By the same rules the sentence in the cases provided by the p. 4 of the present article is imposed".

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