

THE JUDGES' COUNCIL OF THE SUPREME PEOPLE'S COURT

Resolution No. 01/2013/NQ-HDTP of November 6, 2013, guiding the application of Article 60 of the Penal Code on suspended sentence

Pursuant to the Law on Organization of People's Courts;

For proper and uniform application of the provisions of Article 60 of the Penal Code;

After reaching agreement with the Chairperson of the Supreme People's Procuracy and the Minister of Justice,

RESOLVES:

Article 1. Suspended sentence

Suspended sentence is the conditional exemption from execution of the penalty of imprisonment handed down by the court to an offender who is sentenced to termed imprisonment of up to 3 years, when the court, based on the personal background of the offender and extenuating circumstances, sees unnecessary to compel the execution of the penalty of imprisonment.

Article 2. Consideration of handing down of suspended sentence to persons sentenced to imprisonment

1. A person sentenced to imprisonment may be considered for suspended sentence only when fully satisfying the following conditions:

a/ He/she is sentenced to imprisonment of up to 3 years for a less serious crime, serious crime or very serious crime as classified in Clause 3, Article 8 of the Penal Code;

b/ He/she has a good personal background as proved that he/she, except the commission of this crime, has always respected the public rules, properly observed law and policies, fulfilled civic obligations in his/ her place of residence and workplace, never violated law-prescribed prohibitions and never been convicted, administratively handled or disciplined.

Offenders who had previous convictions already remitted or automatically remitted will be regarded as having never been convicted; or offenders who had been administratively handled or disciplined are now regarded as having never been administratively handled or disciplined because the duration after which they will be regarded as so has expired or the statute of limitations for administratively handling or disciplining them has expired but their personal backgrounds will not be regarded as good. The handing down of suspended sentence to these persons must be taken into careful

consideration. Only those who fall into any of the following cases may be considered for suspended sentence:

b1/ Those who had been sentenced to between over 3 and 15 years in prison for a crime committed intentionally (including the case of augmentation of penalties for many crimes or under many judgments) and have had such conviction remitted for more than 2 years by the date of commission of this new crime;

b2/ Those who had been sentenced to up to 3 years in prison for a crime committed intentionally and have had such conviction remitted for more than 1 year by the date of commission of this new crime;

b3/ Those who had been convicted for a crime and subjected to caution, fine or non-custodial reform and have had such conviction remitted for more than 1 year by the date of commission of this new crime;

b4/ Those who had been convicted for a crime committed unintentionally and have had such conviction remitted;

b5/ Those who had been consigned into compulsory education establishments twice or more and have been regarded as having never been administratively handled for more than 2 years by the date of commission of this new crime;

b6/ Those who had once been consigned into compulsory education establishments and administratively sanctioned or disciplined for many times and have been regarded as having never been administratively handled or sanctioned or disciplined for more than 2 years by the date of commission of this new crime;

b7/ Those who had been consigned into compulsory education establishments and have been regarded as having never been administratively handled for more than 18 months by the date of commission of this new crime;

b8/ Those who had been administratively handled or disciplined twice or more and have been regarded as having never been administratively handled or disciplined for more than 18 months by the date of commission of this new crime;

b9/ Those who had been administratively handled or disciplined for an act of the same nature with this new crime and have been regarded as having never been administratively handled or disciplined for more than 1 year by the date of commission of this crime;

b10/ Those who had been administratively handled or disciplined and have been regarded as having never been administratively handled or disciplined for more than 6 months by the date of commission of this new crime;

b11/ Those who have been subject to the administrative handling measure of education in communes, wards or townships or consignment into compulsory detoxification establishments and are now regarded as having never been administratively handled after the prescribed duration expires;

c/ He/she has a place of residence with a specific and clear address;

d/ He/she has no circumstance aggravating his/her penal liability as prescribed in Clause 1, Article 48 of the Penal Code and has two or more circumstances extenuating his/her penal liability, including at least one circumstance prescribed in Clause 1, Article 46 of the Penal Code. If he/she has one aggravating circumstance, he/she must have three or more extenuating circumstances, including at least two ones prescribed in Clause 1, Article 46 of the Penal Code.

Extenuating circumstances prescribed in Clause 2, Article 46 of the Penal Code are guided at Point c, Section 5 of Resolution No. 01/2000/NQ-HDTP of August 4, 2000, of the Judges' Council of the Supreme People's Court, guiding the application of a number of provisions in the General Part of the 1999 Penal Code;

dd/ He/she can reform himself/herself into a good person and his/her exemption from execution of the imprisonment penalty will not badly affect the prevention and combat of crimes, especially corruption.

2. A person who falls into any of the following cases is not entitled to suspended sentence:

a/ He/she is an offender that must be severely punished as defined Clause 2, Article 3 of the Penal Code, including conspirator, ring-leader, commander, die-hard opposer, scoundrel hooligan, dangerous recidivist, one who has abused his/her position and powers to commit the crime, one who has committed the crime with treacherous ploys, in an organized and professional manner, or with the intention to cause serious consequences; he/she commits a particularly serious crime;

b/ He/she is tried at a time for more than one crime;

c/ His/her file shows that in addition to having committed this crime and being brought to trial, he/she had also committed another crime for-which he/she has been tried in another case or he/she is currently subject to the institution of, investigated or prosecuted in another case;

d/ He/she is an on-bail defendant absconding in the stage of preparation for trial and subject to a search warrant issued by the investigative agency at the request of the court.

3. In when considering and deciding to hand suspended sentence to a person sentenced to imprisonment, attention must be paid to the following:

a/ If he/she has been held in custody or temporary detention, suspended sentence may be given only when the period of custody or temporary detention is shorter than the imprisonment term;

b/ If he/she has many extenuating circumstances and fully satisfies the conditions for application of Article 47 of the Penal Code, it is the lenience policy that he/she is sentenced to the next lighter penalty. He/she may not be sentenced to imprisonment and enjoy suspended sentence for a crime which is condemned by the public, especially a position-related crime, with a view to intensifying the prevention and combat of crimes in general and the prevention and combat of corruption in particular;

c/ If there is a circumstance worsening his/her crime which is not prosecuted by the procuracy, such circumstance must still be applied in the adjudication of his/her case in accordance with law; if he/she has any circumstance aggravating his/her penal liability as prescribed in Article 48 of the Penal Code, such circumstance must be applied. In other words, all circumstances worsening the crime and aggravating the penal liability as prescribed in Article 48 of the Penal Code must be applied, whether or not suspended sentence is to be handed down;

d/ When deciding on penalties, the court shall adhere to the punishment principles prescribed in Article 3 of the Penal Code combined with the bases for deciding on penalties prescribed in Article 45 of the Penal Code. The court shall neither regard suspended sentence as a penalty lighter than the penalty of imprisonment so as to groundlessly impose heavier penalties in other cases and hand down suspended sentence, nor groundlessly reduce the penalty of imprisonment to satisfy the conditions for enjoying suspended sentence prescribed in Article 60 of the Penal Code.

Article 3. Determination of test period

When handing down suspended sentence to a person sentenced to imprisonment, the court shall determine a test period which is twice as long as the imprisonment term but must be between one year and five years.

Article 4. Starting time of test period

The starting time of a test period is the first date of judgment pronouncement to hand down suspended sentence, specifically as follows:

1. In case the first-instance court hands down suspended sentence, the judgment is not appealed or protested against according to the appellate procedures, the starting time of the test period is the date of first-instance judgment pronouncement.

2. In case both the first-instance and appellate courts hand down suspended sentence, the starting time of the test period is the date of first-instance judgment pronouncement.
3. In case the first-instance court does not hand down suspended sentence but the appellate court hands down suspended sentence, the starting time of the test period is the date of appellate judgment pronouncement.
4. In case the first-instance court hands down suspended sentence, the appellate court does not hand down suspended sentence, but the cassation court quashes the appellate judgment for retrial according to appellate procedures and hands down suspended sentence, the starting time of the test period is the date of first-instance judgment pronouncement.
5. In case both the first-instance and appellate courts have handed down suspended sentence but the first-instance and appellate judgments are quashed for reinvestigation, then the first- instance and appellate courts again hand down suspended sentence during retrial according to first-instance and appellate procedures, the starting time of the test period is the date of subsequent first-instance or appellate judgment pronouncement as guided in Clauses 1, 2, 3 and 4 of this Article.

Article 5. Handover of persons entitled to suspended sentence to commune-level People's Committees or Army units for supervision and education during test period

1. When handing down suspended sentence to a person sentenced to imprisonment, the court shall clearly state in the judgment the handover of such person to the People's Committee of the commune where he/she resides or to the Army unit assigned to supervise educate him/her, for supervision and education during the test period.
2. When handing over a person entitled to suspended sentence to the People's Committee of the commune where he/she resides for supervision and education during the test period, the court shall clearly indicate the commune level of the commune-level People's Committee-; the name of the district, town or provincial-level city; the name of the province or centrally run city assigned to supervise and educate such person, and at the same time clearly state that in case such person changes his/her place of residence, Clause 1, Article 69 of the Law on Execution of Criminal Judgments must be complied with.
3. When handing over a person entitled to suspended sentence to an Army unit for supervision and education during the test period, the court shall clearly indicate the name and full address of such unit, and at the same time state that in case such person changes his/ her place of residence,

Clause 2, Article 69 of the Law on Execution of Criminal, Judgments must be complied with.

Article 6. Augmentation of penalties in case the person entitled to suspended sentence commits a new crime during the test period

In case a person entitled to suspended sentence commits a crime during the test period, the court shall decide on a penalty for such crime and augment it and the penalty of imprisonment in the previous judgment under Articles 50 and 51 of the Penal Code. If such person been held in custody or temporary detention, the period of custody or temporary detention for the crime tried this time and that for the previously tried crime in the previous judgment may be cleared against the term of imprisonment.

Article 7. Case in which a person entitled to suspended sentence for a crime is brought to trial for another crime committed before the suspended sentence is handed down to him/her

In case it is detected that a person currently entitled to suspended sentence for a crime has committed another crime before the suspended sentences handed down to him/her, the court shall try and decide on a penalty for such crime but may not hand down suspended sentence to him/her once again. The offender shall execute both judgments. The judgment in this case is executed by agencies responsible for criminal judgment execution in coordination with one another under Article 5 of the Law on Execution of Criminal Judgments.

Example: On December 15, 2011, Bui Van B committed the crime of gambling. On March 20, 2012, he was sentenced by the People's Court of city V to 6 months in prison for gambling but then given to suspended sentence with a test period of 1 year. After being convicted for gambling and the judgment takes legal effect, the investigative police detects that earlier on October 10, 2011, he also committed the crime of stealing property and was prosecuted before the court of district M. In this case, during trial, the court of district M would not hand down suspended sentence to him once again. If the judgment of the court of district M is not appealed or protested against and takes legal effect, he shall execute both the judgments of the People's Court of city V and the People's Court of district M.

Article 8. Effect

1. This Resolution was adopted on October 14, 2013, by the Judges' Council of the Supreme People's Court, and takes effect on December 25, 2013.

2. The previous guidance of the Judges' Council of the Supreme People's Court on suspended sentence which is contrary to the guidance of this Resolution shall be annulled.

3. For offenders tried before the effective date of this Resolution under the previous guidance with judgments having taken legal effect, this Resolution does not serve as the ground for making protests against such judgments according to the cassation or reopening procedures, unless there is another ground for protest.

4. Any problems arising in the course of implementation which need to be additionally explained or guided should be reported to the Supreme People's Court for timely additional explanation or guidance.-

On the behalf of the Judges' Council

President of the Supreme People's Court

TRUONG HOA BINH