Federal State Autonomous Educational Institution of Higher Education
"Kazan (Volga Region) Federal University"

Rail Rasyhovich Valiev

PROPERTY STATUS OF PARTIES TO CONDITIONAL SUSPENSIVE OBLIGATION

Dissertation summary
for the purpose of obtaining academic degree
Doctor of Philosophy in Law

Academic supervisor:
Doctor of Science in Law, professor
Vadim Anatolyevich Belov

Kazan - 2021

The thesis was completed at the Department of Civil Law of the Faculty of Law of the Federal State Autonomous Educational Institution of Higher Education "Kazan (Volga Region) Federal University"

The text of the thesis is deposited and available on the website of the National Research University "Higher School of Economics":
https://www.hse.ru/sci/diss/

12.00.03 - Civil law; business law;
family law; private international law

GENERAL DESCRIPTION OF THE WORK

Urgency of the thesis research. There are not so many difficult places left in civil law that can really be enriched with in-depth studies. Conditional transactions are one of such difficult places. They are a very flexible and effective tool that allows the economic agents to best solve certain tasks facing them. "The condition... opens up the possibility for the parties to subjugate the future instead of making themselves dependent on it"[1]. At the same time, the more complicated economic relations become, the more important conditional transactions become[2].

The most common consequence of conditional transactions is a conditional suspensive obligation. Thus, a conditional suspensive obligation is the core of the doctrine of conditional transactions, without the study of which, of course, it is impossible to create a full-fledged doctrine of conditional transactions. Meanwhile, despite some positive trends, by and large, it is still worth recognizing that the domestic doctrine of obligations under the suspensive condition is only at the initial stage of its formation. Almost all authors, one way or another revisiting this topic, consider conditional suspensive obligation solely as a possible future obligation failing to notice that the property status of its parties is characterized by the already inherent chances and risks. This study, unlike all others, is devoted to the examination of the conditional suspensive obligation primarily as a chance and risk.

If the XX century is in many ways a century of rights (claims) as independent objects of civil law relations, then the XXI century, with the increasingly complicated economic and other relations, is likely to become the century of chances and risks. The study of the latter in this regard is becoming increasingly important and urgent. One of the areas where the chances and risks are most noticeable is the sphere of conditional transactions, in particular obligations under the suspensive condition.

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[1] Quoted after: Kuznetsova, L.V. "Conditional Transactions", in: Rozhkova, M.A. (ed.). Transactions: Problems of Theory and Practice: Collected Papers. Moscow, 2008. P. 198.

[2] See: Kazansky, S. "Revisiting the Value of Conditions in Legally Binding Transactions". Legal Bulletin. 1881. No. 8. P. 560.

The importance and urgency of the study of conditional transactions and their main consequence – conditional suspensive obligation multiplied by the importance and urgency of the study of chances and risks as such, result in even greater importance and urgency of the study of the property status of the parties to the conditional suspensive obligation through the prism of chances and risks.

Degree of scientific development of the thesis research topic. The property status of the parties to the conditional suspensive obligation through the prism of chances and risks has not become the subject matter of an independent monographic or any other study. To date, there is only one thesis study devoted only to the issue of the nature of a conditional obligation[3]. At the same time, there are countless works, both foreign and domestic which highlight certain issues related to the topic of conditional transactions that are not exactly the subject matter of our research.

Subject and the scope of the thesis research. The subject of the thesis research is the property component of the social relations that develop between the parties to the conditional suspensive obligation as well as between such parties and third parties.

The scope of the thesis research is foreign and Russian legal doctrine, norms of Russian and foreign law, domestic and foreign case law either way relating to the subject of the research.

Purpose and objectives of the thesis research. The purpose of this study is to address the scientific challenge of the property status of the parties to the conditional suspensive obligation which consists in the inability to qualify such a status with the help of the currently available civil law tools as well as to develop a corresponding author's scientific outlook.

Based on this purpose, the following objectives are set:

1) to study the property status of the parties to the conditional suspensive obligation in historical and comparative law aspects;

[3] See: Vasnyov, V.V. The Nature of the Conditional Obligation: A PhD Thesis in Law. Saint Petersburg State University, Saint Petersburg, 2013.

2) to consider the dogmatics of the conditional suspensive obligation, i.e. conditional suspensive obligation as a possible future obligation;
3) to develop a civil law theory of chances and risks;
4) to study contractual manifestations of objectability of chances and risks from conditional suspensive obligations;
5) to study non-contractual manifestations of objectability of chances and risks from conditional suspensive obligations.

Methodological, normative, empirical and theoretical foundations of the thesis research. The methodological basis of the thesis research was made up of general scientific (analysis, synthesis, deduction, induction, analogy, dialectical) and special juridical (historical, comparative, dogmatic, political) research methods.

The legal framework of the study was the norms and provisions of foreign (USA, Germany, France, Italy, Austria, Switzerland, Ukraine, Latvia, etc.) and domestic legislation including those that have become invalid as well as some international legal acts.

The empirical basis of the study was the American, English, German and Russian case law.

The research is based on the theoretical works of domestic and foreign civilists

- *in English* (Brantly W.T., Brennwald S.F., Corbin A.L., Farnsworth E.A., Ferot A., Jansen N., King J.H., Salmond J., Sepinuck S.L., Sturgess R.H., Treitel G.H., Williams J., Zimmermann R., etc.),
- *German* (Armgardt M., Flume W., Forkel H., Hofmann F., Larenz K., Wolf M., etc.) and
- *Russian* (Agarkov M.M., Annenkov K.N., Baybak V.V., Baron Y., Bevzenko R.S., Belov V.A., Vindsheyd B., Vitryanskiy V.V., Golevinskiy V., Grimm D.D., Gromov S.A., Dernburg G., Karapetov A.G., Krasheninnikov E.A., Meyer D.I., Morandiere L.J. de la, Novitskiy I.B., Novoselova L.A., Planiol M., Pobedonostsev K.P., Raykher V.K., Savatye R., Serebrovskiy V.I., Sinaiskiy V.I., Khvostov

V.M., Shershenevich G.F., Shcherbakov N.B., Enneccerus L., etc.) languages.

Scientific novelty of the thesis research. Ideas submitted for the defense. The scientific novelty of this study consists in solving the scientific problem of the property status of the parties to the conditional suspensive obligation and in developing a corresponding author's scientific concept according to which such a status is viewed through the prism of chances and risks that have independent property value and are fundamentally objective.

The following basic ideas reflecting the scientific novelty of the dissertation research are submitted for defense:

1. Civil law holds it axiomatic that an obligation does not arise immediately upon the conclusion of the conditional suspensive transaction but only with the occurrence of a condition. Common law allows both options: with an obligation already existing before the occurrence of the suspensive condition, and with its happening only with the occurrence of such a condition. Russian law, being closer to Romano-Germanic law system, must proceed from the fact that an obligation under suspensive condition does not yet exist before the occurrence of such a condition, it arises only with the occurrence of the condition.
2. The property status of the parties to the conditional suspensive obligation must be considered on differentially, taking into account its duality: not only from the perspective of the possible future rights, duties and related transactions but also from the standpoint of already existing chances/risks that have independent (irrespective of the occurrence or non-occurrence of a condition, divorced from possible future rights and obligations) property value, and therefore also capable of being an independent subject matter of transactions[4].

[4] See: Valiev, R.R. "Property Status of Parties to Conditional Suspensive Obligation". Statute. 2020. No. 7. P. 157-177.

3. Chances are independently transferable, they need civil law protection, both in the event of a violation of the contract and in case of tort, and therefore are objects of civil law relations.
4. Risks are independently transferable, they need civil law protection, both in the event of a violation of the contract and in case of tort, and therefore are objects of civil law relations.
5. The policy and practice of handling chances and risks from conditional suspensive obligations should be aimed at limiting the circulability of such chances and risks. As a general rule, agreements on the assignment of chances related to the conditional suspensive obligations should be recognized as betting transactions with a corresponding refusal of judicial protection to their participants, and in some cases as invalid on supplemental grounds. In turn, agreements on the assignment of risks in the area of conditional suspensive obligations, as a general rule, should be recognized as void. Finally, agreements on assignment and pledge of conditional claims by default should be interpreted as agreements on assignment and pledge of possible future claims, and not as agreements on assignment and pledge of chances.
6. The policy and practice of dealing with the chances and risks from conditional suspensive obligations should be aimed at expanding the scope of non-contractual manifestations of the objectability of such chances and risks. Such non-contractual objectability consisting in the possibility, under certain conditions, of converting a conditional claim into an non-conditional one of a smaller size corresponding to the price of the chance/risk, should manifest itself in cases of unfair obstruction to the occurrence of the suspensive condition by a party to whom the occurrence of the condition is unfavorable, damage to the chance by a third party, bankruptcy, both of the conditional debtor and the conditional creditor, forced (non-bankrupt) liquidation of the conditional debtor, the collision of the previous conditional pledge holder who took all available measures to minimize the risk of anticipatory foreclosure on

the pledged property by subsequent pledgees, and the subsequent non-conditional bona fide pledgee[5].

Theoretical and practical relevance of the thesis research. The theoretical relevance of the thesis research is determined by its scientific novelty.

The practical relevance of the study lies in the possibility of using the ideas and conclusions contained in it to improve the current legislation and case law. In particular, the following suggestions and recommendations are articulated and validated:

1. As a general rule, agreements on the assignment of chances related to conditional suspensive obligations should be recognized as betting transactions with a corresponding refusal of right of relief to the parties. And only in cases where there is an additional justification (to the elimination of the already existing economic risk by the assignor) such as the special status of the assignee, the opportunity he has to legitimately contribute to the occurrence of a suspensive condition – the claims from the relevant agreement should be subject to relief in court.
2. In cases where an agreement on the assignment of a chance from a conditional suspensive obligation is concluded with respect to a chance that has an extremely poorly distinguishable property value due to the low probability of the occurrence of a suspensive condition, and also when an agreement on the assignment of a chance from a conditional suspensive obligation implies a decrease in the probability of the occurrence of a suspensive condition, the chance or part of it, based on the equitable construction of Article 383 of the Civil Code of the Russian Federation (hereinafter referred to as the CCRF), should be recognized as inextricably linked to the conditional creditor, and the transaction contradicting this is invalid.

[5] See: Valiev, R.R. "Non-Contractual Manifestations of Objectivity of Chances and Risks from Conditional Suspensive Obligations". Statute. 2020. No. 8. P. 125-144.

3. Agreements on assignment and pledge of conditional claims by default should be interpreted as agreements on assignment and pledge of possible future claims, and not as agreements on assignment and pledge of chances.
4. Agreements on the transfer of risks in the area of the conditional suspensive obligations to any third parties who are not insurers should be recognized as transactions made in circumvention of the law, namely, in circumvention of the rules on insurance, and, therefore, invalid.
5. Subparagraph 1 of paragraph 3 of Article 157 of the CCRF should be interpreted as fixing the possibility, but not the need to apply the fiction of the occurrence of a suspensive condition under appropriate circumstances. The basic scenario in this case should be compensation for losses. At the same time, their size should be determined by the property value of the corresponding chance, which in turn is equal to the product of the price of the corresponding full-fledged right to the probability of the occurrence of a suspensive condition at the time of preventing such an occurrence.
6. If absolute protection is fundamentally permissible in relation to a relative (binding) right, then such protection should be recognized as fundamentally permissible in relation to the chance from a conditional suspensive obligation.
7. If waiting for the resolution of a suspensive condition excessively delays the conduct of a bankruptcy case, the court must, at the request of the conditional creditor (if the conditional debtor goes bankrupt) or at the request of the bankruptcy trustee (if the conditional creditor goes bankrupt) and against the will of other interested parties (based, of course, on the adversarial nature of the parties), give a monetary assessment of the chance of the conditional creditor (respectively, of the risk of the conditional debtor). Such monetary valuation should be equal to the product of the nominal value of the conditional claim and the probability of the occurrence of a suspensive condition.
8. If waiting for the resolution of a suspensive condition excessively delays the liquidation procedure (in the case of forced (non-bankrupt) liquidation of a

conditional debtor), the court, by analogy with bankruptcy, should give a monetary assessment of the chance of a conditional creditor, i.e. convert his conditional claim into a non-conditional one of a smaller size.

9. In the event of a collision (when foreclosure on an non-conditional claim secured by a subsequent pledge comes ahead of the occurrence of a suspensive condition, i.e. the occurrence of a claim secured by a previous pledge) of the preceding conditional pledgee who has taken all measures available to him to minimize the risk of an early foreclosure on the pledged property by subsequent pledgees and the subsequent non-conditional bona fide pledgee, the latter should have the right to file and satisfy a claim for a monetary assessment of the conditional claim of the preceding pledgee, i.e., for the transformation of his conditional claim into an non-conditional of a smaller size[6].

At the same time, the proposals and recommendations contained in paragraphs 7-9 require amendments to the legislation. The rest of the proposals and recommendations can and should be implemented at the level of judicial practice.

Besides, the provisions and conclusions contained in the thesis research can be used by lawyers in their practice as well as by teachers in the educational process.

Degree of reliability and evaluation of results of the thesis research. The thesis was completed, discussed and approved at the Department of Civil Law of the Faculty of Law of Kazan (Volga Region) Federal University.

On the topic of the thesis, four articles of the author with a total volume of 6.2 printed sheets were published in peer-reviewed dedicated journals recommended for defense in the Dissertation Council on Law of the National Research University "Higher School of Economics", the last three of which set out the key research insights of the thesis.

Structure of the thesis research. The structure of the thesis is determined by its objectives and the need for a consistent presentation of the material. The thesis

[6] Concerning paragraphs 5-9 see: Valiev, R.R. "Non-Contractual Manifestations of Objectivity of Chances and Risks from Conditional Suspensive Obligations". Statute. 2020. No. 8. P. 125-144.

consists of an introduction, three chapters each of which is divided into two paragraphs, conclusion and bibliography.

SUMMARY OF THE WORK

The introduction substantiates the urgency of the chosen topic of the thesis, indicates the degree of its elaboration, defines the purpose and objectives of research, its subject and scope, reveals the methodological, normative, empirical and theoretical foundations of the research, its scientific novelty, theoretical and practical significance, lists the basic ideas submitted for defense, provides information about the evaluation of the research results and its structure.

The first chapter "The history and comparative view of the topic" consists of the two paragraphs and is devoted to the analysis of the topic of the property status of the parties to the conditional suspensive obligation in historical and comparative law aspects.

The first paragraph, "The property status of the parties to the conditional suspensive obligation in foreign law", provides the Roman, French, German and Anglo-Saxon approaches to the topic in consideration.

Civil law holds it axiomatic that an obligation does not arise immediately upon the conclusion of the conditional suspensive transaction but only with the occurrence of a condition. Common law allows both options: with an obligation already existing before the occurrence of the suspensive condition, and with its happening only with the occurrence of such a condition.

At the same time, Roman law, characterizing the position of the parties to a conditional transaction before the resolution of the suspensive condition with the word "hope" and admitting the existence of transactions whose subject is hope in itself (albeit not the hope that takes place during the condicio pendet period), gave rise to a differentiated consideration of the property status of the parties to the conditional suspensive obligation: not only from the perspective of a possible future

obligation, but also from the standpoint of an existing hope that can be an independent subject of transactions[7].

The analysis of the French civil legislation and the French civilistic literature also pushed us to the same conclusion about the need for a differentiated consideration of the property status of the parties to the conditional suspensive obligation.

The specificity of German law is the presence in it of such an institution, not specified in the law, but recognized by judicial practice and doctrine, as Anwartschaftsrecht, capable of being an independent object of disposal. With regard to the topic of conditional transactions, this term is usually used only in connection with a sale and purchase agreement with the reservation that the seller retains ownership of the thing until it is paid in full. Nevertheless, in view of the de facto absence in the German doctrine of at least some developed theory of "expectation rights" in areas of civil law other than property law, especially in the field of law of obligations, the most general conclusion about the duality of the property status of a conditionally authorized person can be extrapolated to a conditional suspensive obligation.

The bright examples we have cited from American law and English judicial practice also show, albeit with a discount on the uncharacteristic for the civil law family, too broad construction of the condition in common law, that the chance that the creditor under the conditional obligation has before the resolution of the suspensive condition has an independent (independent of the occurrence-non-occurrence of the condition, divorced from possible future right) property value.

Mostly on the foreign law basis, we eventually came to the conclusion in the first chapter of our research that the property status of the parties to the conditional suspensive obligation must be considered differentially, taking into account its dual nature: not only from the perspective of possible future rights, duties and related transactions but also from the standpoint of already existing chances/risks that have

[7] See: Valiev, R.R. "Property Status of Parties to Conditional Suspensive Obligation". Statute. 2020. No. 7. P. 157-177.

independent (irrespective of the occurrence or non-occurrence of a condition, divorced from possible future rights and obligations) property value, and therefore also capable of being an independent subject matter of transactions.

The second paragraph "The property status of the parties to the conditional suspensive obligation in Russian law", dedicated to the pre-revolutionary, Soviet and modern domestic approaches to the problems we are analyzing, only confirmed the above general conclusion of the first chapter.

Russian law, being closer to Romano-Germanic law system, must proceed from the fact that an obligation under suspensive condition does not yet exist before the occurrence of such a condition, it arises only with the occurrence of the condition.

Based on the M.M. Agarkov's concept of dynamic legal capacity, we came to the conclusion that, similarly to how the legal capacity of persons who have entered into a transaction with a suspensive condition changes, in comparison with all other persons (they become potential holders of specific rights and obligations depending on the occurrence of a suspensive condition), their property status also changes: the assets of a conditionally authorized person grow with chance, and the liabilities of a conditionally obligated person grow with the liability risk.

Based on the position of A.G. Karapetov we came to the following conclusions. On the one hand, the parties to an obligation under suspensive condition may become parties to a full-fledged obligation in the future. On the other hand, they are already chances/risks carriers that have a property value, independent of the occurrence or non-occurrence of a condition. On the one hand, they can conclude transactions aimed at assignment, pledge, security, termination of possible future rights and obligations. On the other hand, they may enter into similar transactions with respect to the existing chances/risks. The subject matter of transactions in the first case is possible future rights and obligations; in the second case, the chances and risks themselves. In the first case, the legal effects that the transactions are aimed

at will take place only when the condition occurs; in the second, immediately and regardless of such an occurrence[8].

In **the second two-paragraph chapter "Dogmatics and theory of the issue"** the issue of the property status of the parties to the conditional suspensive obligation is considered from the dogmatics and theoretical viewpoints.

The first paragraph, "A possible future obligation as a component of the property status of the parties to the conditional suspensive obligation", highlights issues related to the first component of the property status of the parties to the conditional suspensive obligation which we call "a possible future obligation". We consider this component, given it's well developed, mainly from legal dogma standpoint, occasionally indicating some alternative opinions and solutions.

In particular, we suggest a listing of the main practical features of the assignment of a conditional claim (as a possible future claim, and not as a chance).

Firstly. In the case of assignment of a conditional claim, the transfer of the claim from the assignor to the assignee occurs only on the occurrence of a suspensive condition.

Secondly. The claim at the moment of its occurrence passes from the assignor to the assignee, i.e. it first arises on the assignor and only after a "logical" or "legal" second of time passes over to the assignee. Consequently, if bankruptcy is initiated against the assignor after the conclusion of an agreement on the assignment of a conditional claim, but before the onset of a suspensive condition, the claim that has occurred is drawn into the bankruptcy estate and does not pass to the assignee.

Thirdly. The terms of the agreement that serves as a basis for the assignment of the conditional claim is made can be of two kinds. Such an agreement may give rise to both conditional rights and obligations (if the suspensive condition is not fulfilled, the assignor is not responsible for non-transfer of the claim, the assignee's counter obligation does not arise, if he mistakenly performed, it can be returned back as unjustified enrichment), and non-conditional (if the suspensive condition is not

[8] See: Valiev, R.R. "Property Status of Parties to Conditional Suspensive Obligation". Statute. 2020. No. 7. P. 157-177.

fulfilled, the assignor is responsible for non-transfer of the claim, the assignee has the right not to provide consideration, if it has already been carried out, the assignee has the right to claim that the assignor returns everything handed over under the assignment agreement, as well as compensates losses caused (paragraph 3 of Article 390 of the CCRF)). In this case, the second option should be used by default.

Fourthly. If the same conditional claim is assigned by the assignor to several assignees, then despite the simultaneous entry into force of its conflicting orders (at the time of the origin of the claim), the first assignment should prevail.

Similarly to the assignment of a conditional claim, we also determine the main practical features of the conditional debt transfer (as a possible future debt, and not as a risk) as well as the pledge of a conditional (possible future) claim.

The issue of conditional (again, as possible future) claims in bankruptcy is explored separately.

It is quite obvious that, from a dogmatic point of view, conditional claims as a creditor's property asset and a bankrupt debtor's property liability must somehow be taken into account within the bankruptcy case framework. The fundamental ability of a possible future claim, including conditional, to be declared in a bankruptcy case, we can state on the basis of the explanation contained in subparagraph 2 paragraph 52 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 42 dated 12.07.2012 "On certain issues of dispute resolution related to surety." At the same time, such a claim can be filed already at the supervision stage, since the interim trustee, in order to fulfill his duties, in particular for a full-fledged analysis of the debtor's financial condition, needs to have the fullest possible understanding of the assets and liabilities of the latter.

We have also established that from the legal dogma standpoint, a conditional claim does not fall into the number of current payment claims. It is another matter that it is hard to attribute conditional claim to the registry claims as well, because a literal interpretation of Federal Law No. 127-FZ of 26.10.2002 "On Insolvency (Bankruptcy)" (hereinafter – the Federal Law on Bankruptcy) leads to the conclusion

that only existing (occurred) claims are included in the register of creditors' claims. Technically, a conditional claim must be taken into account, apparently, somewhere independently, outside the register, and after (in case of) the occurrence of a suspensive condition, it should be included in the register on the basis of an additional judicial act stating such an occurrence and, as a consequence, recognizing the corresponding right (claim). Accordingly, prior to the occurrence of a suspensive condition, a conditional creditor should not have the right to vote at meetings of creditors, but, apparently, can participate in them without the right to vote (subparagraph 1 of paragraph 1 of Article 12 of the Federal Law on Bankruptcy).

A conditional (exactly as a possible future) claim is subject to satisfaction, of course, only in the event of the occurrence of a suspensive condition.

A conditional claim must be taken into account, of course, in the bankruptcy case of a conditional creditor[9].

The study also touches upon the issues of the fulfillment of the conditional suspensive obligation, its security as well as the release of the conditional debt.

The second paragraph "Chances and risks as objects of civil law relations" concerns the second component of the property status of the parties to the conditional suspensive obligation, and we call it "chances and risks". At the same time, it is necessary to understand that the problem of chances and risks as an independent component of the property status of the parties to the conditional suspensive obligation is part of a more general issue – chances and risks in civil law in general. In this regard, a full-fledged study of the first issue, claiming to be of scientific value, including, in the first place, its political and legal component, is possible only if the theory of the second issue is studied. The latter is all the more necessary in view of the fact that chances as such, as far as we know, have not yet been the subject matter of independent study by civil scientists. Therefore, we started the study of chances and risks from conditional suspensive obligations with the civil law theory of chances and risks in general, even though we had to deviate noticeably

[9] Concerning conditional claims in bankruptcy see: Valiev, R.R. "Non-Contractual Manifestations of Objectivity of Chances and Risks from Conditional Suspensive Obligations". Statute. 2020. No. 8. P. 125-144.

from the topic for this. The second paragraph is devoted to the development of such a theory.

Earlier, we came to the conclusion that the chances and risks from conditional suspensive obligations have an independent (independent of the occurrence or non-occurrence of the condition, divorced from possible future rights and obligations) property value, and therefore are also capable of being an independent subject matter of transactions. Shouldn't we go even further, putting the question straight: can chances and risks be the objects of civil law relations?

The problem of objects of (civil) rights/ law relations is one of the most difficult problems not only of civil law but of the theory of law in general. Given the vastness of this topic, on the one hand, and the requirements for the volume of thesis research, on the other, we have to rely on some, roughly speaking, "average" understanding of the object meaning that the object of a civil law relations can be considered as something that features independent circulability and/or needs civil law protection. In other words, in order to prove the civil-law objectability of a particular category, it is sufficient that we prove either its capability of independent circulability or the need for its civil law protection.

The following statements are devoted to the proof and demonstration in the specific contexts independent circulability and the need for civil protection, first of chances, and then of risks.

Thus, it is argued that, similarly to the rights of obligations (claims), the involvement of chances in civil circulation is also due to the action of two dialectically related factors. On the one hand, a chance, as we found out by the example of the conditional suspensive obligation, can also represent a certain benefit, including having an independent property value, and therefore, just like a claim, it is quite capable of being in demand in circulation. On the other hand, having a chance is associated, as a rule, with even greater risks than in the case of a claim, the desire to get rid of which by way of a paid (albeit for a small fee) concession of a chance to another person is quite natural. Accordingly, if any of the participants in civil circulation wants to acquire a chance for less money, before it turns into a full-

fledged right with a corresponding increase in price, and the owner of this chance wants to give it up, albeit cheaper than a full-fledged right would cost, but together thus getting rid of the risk of not realizing the chance, then why prevent those persons from entering into such a deal? Certain restrictions on the circulability of chances, first of all, of a political and legal nature, obviously, should exist, including, perhaps, with regard to the subject composition of the relevant transactions, but this should not affect their fundamental circulability.

Further, the study demonstrates specific practical examples of the circulability of chances including those from the conditional suspensive obligations, and offers critical review of the position of those scholars who do not recognize the objectability of liability rights (claims), and hence that of the chances.

Then, using the example of the common doctrine of loss of chance, the necessity of civil protection of chances is proved and demonstrated in specific court cases from English contractual and American contractual and tort law.

Thus, the independent circulability of chances and the need for its civil protection are proved and shown in the specific contexts. Accordingly, it is concluded that the chances are independently circulable, need civil protection, both in case of breach of contract and in case of tort, and therefore appear to be objects of civil law relations.

Similarly, with risks: first, their circulability is argued, then – the need for their civil law protection.

The circulability of risks is easily confirmed in the context of insurance: from a legal point of view, insurance, at least property insurance, is nothing but the payment of a premium to the insurer for his taking on the risk.

The risk, no matter how strange it may seem at first glance, needs civil law protection in about the same way as the chance, with the only difference that the chance should be protected from its diminution (deprivation), and the risk from its increase (evolving into the inevitability of adverse consequences). This is quite natural, because chance and risk are two inextricably linked categories. Wherever there is a possibility of any favorable outcome, there is always a danger that such a

favorable outcome will not occur in the end; wherever there is a chance of something good, there is always a risk of something bad (at least in the sense of no good happening). Accordingly, if civil law in a given situation, provides a subject with protection from the diminution of a chance belonging to him by some (third) person, then in relation to such a situation it is quite appropriate to say that protection of this subject is at the same time provided against the increase in the risk of non-realization of the chance that he holds.

The need for civil protection of risks is also supported by US well-known tort law doctrine of increased/enhanced risk, and some other American court cases where an increase in the risk of harm is not an independent basis for a claim but is taken into account when determining the amount of compensation awarded, are also cited.

Based on the above, it is concluded that the risks are also independently circulable, need civil law protection, both in case of breach of contract and in case of tort, and therefore are objects of civil law relations.

Resultantly, the study reaches the articulation of the general conclusion of the second chapter: chances and risks are objects of civil law relations.

This general conclusion is also verified from the point of view of the monistic theory of objects of legal relations.

In **the third chapter "Policy and practice of the issue"**, also consisting of two paragraphs, the issue of the property status of the parties to the conditional suspensive obligation is studied through policy and practice. At the same time, if the picture is more or less clear in the part of "conditional obligation – possible future obligation" (we can find answers to certain questions not only in the doctrine but also in judicial acts and even in the law), then how to handle in practice those chances and risks that already face the parties of the conditional suspensive obligation, stays unclear or almost incomprehensible. Therefore, within the framework of this chapter we only focus onto that component of the property status of the parties to the conditional suspensive obligation which relates to chances and risks.

The first paragraph "Contractual manifestations of the objectability of chances and risks from the conditional suspensive obligations" delivers analysis of the issues of independent circulability of chances and risks there, its termination as well as insurance of such risks.

With regard to insurance, the study renders substantiation of the conclusion that insuring the risk of the obligation arising on a conditionally liable person is permissible not only from the viewpoint of politics, economics and legal theory but also from the current Russian legislation viewpoint.

With regard to termination, the study demonstrates specific examples of the termination of chances and risks from conditional suspensive obligations through novation, compensation for release, contractual offset that in turn confirm its objectability.

However, most of this paragraph is devoted to the main manifestation of the objectability of chances and risks from conditional suspensive obligations – their circulability.

First, as in the case of the assignment of a conditional claim as a possible future claim, the paper states a list of the main practical features of the assignment of the chance from the conditional suspensive obligation.

Firstly, the transition of the chance from the assignor to the assignee occurs immediately and non-conditionally, and not after (in the case of) the occurrence of a suspensive condition. Secondly, if a suspensive condition occurs, the right (claim) arises immediately on the assignee, bypassing the assignor; accordingly, in the case of bankruptcy of the latter initiated after the assignment of the chance but before the occurrance of the suspensive condition, the resulting full-fledged right (claim) is not drawn into its bankruptcy estate. Thirdly, the assignee and the assignor do not have the right to challenge the transaction on the grounds of its unprofitability (if such a basis is presented de lege lata)[10]. Fourth, if the same chance is conceded by the

[10] See: Valiev, R.R. "Property Status of Parties to Conditional Suspensive Obligation". Statute. 2020. No. 7. P. 157-177.

assignor to several assignees, the advantage, of course, should be given to the first assignment in time.

It is further argued that, on the one hand, in the eyes of the legislator, chances in themselves (without linking them to other objects) have practically no value and, moreover, are something undesirable and even dangerous, something whose widespread practical application can lead to various kinds of abuses, on the other hand, one of the basic principles of civil law is the principle of freedom of contract, the practical implementation of which, in the conditions of the fundamental recognition of the circulability of chances from conditional suspensive obligations and the absence of its legislative regulation, suggests that the circulability of such chances should be subject only to those restrictions that direct circulability of full–fledged binding obligatory rights (claims), otherwise a complete freedom of action is offered.

It is obvious that the two above circumstances collide. In order to somehow reconcile them, the policy and practice of dealing with the chances from obligations under the suspensive conditions, apparently, should be aimed at limiting their circulability (as compared to the circulability of claims). Further presentation is devoted to proving this thesis.

Thus, the following restrictions on the circulability of chances and risks arising out of the obligations under suspensive conditions are justified as necessary and showed in detail.

The first restriction of the circulability of chances from conditional suspensive obligations should be associated with the recognition in certain cases of agreements on the assignment of such chances by betting transactions with the corresponding refusal to their participants in judicial protection. Moreover, such recognition should most likely be a general rule. And only in cases where there is an additional justification (to the elimination of the already existing economic risk by the assignor) such as the special status of the assignee, the opportunity he has to legitimately contribute to the occurrence of a suspensive condition – the claims from the relevant agreement should be subject to relief in court.

The second restriction of the circulability of chances from conditional suspensive obligations should be associated with situations where such chances, due to the low probability of the occurrence of a suspensive condition, have an extremely poorly distinguishable property value. It is necessary that in such situations the chance can be recognized as inextricably linked with the conditional creditor, and the transaction contradicting this should be recognized void.

The third restriction of the circulability of chances from conditional suspensive obligations should be related to situations where agreements on the assignment of such chances imply a decrease in the probability of the occurrence of a suspensive condition. It is necessary that in such situations, some part of the chance can be recognized as inextricably linked with the conditional creditor, and the transaction contradicting this should be recognized void.

The fourth restriction of the circulability of chances from conditional suspensive obligations should be related to the priority interpretation of agreements on assignment and pledge of conditional claims as agreements on assignment and pledge of possible future claims.

The fifth restriction of the circulability, now in relation to the risks from conditional suspensive obligations, should be related to with the recognition of agreements on the transfer of such risks to any third parties that are not insurers, transactions made to bypass the law, namely, to bypass the rules on insurance, and, therefore, as such they should be recognized void.

Thus, de lege ferenda five restrictions on the circulability of chances and risks from conditional suspensive obligations are justified. Still, there are no such restrictions de lege lata. Based on this, the following conclusion is made. The policy and practice of dealing with chances and risks from the obligations under suspensive conditions should be aimed at restricting the circulability of such chances and risks. As a general rule, agreements on the assignment of chances related to the conditional suspensive obligations should be recognized as betting transactions with a corresponding refusal of judicial protection to their participants, and in some cases as invalid on supplemental grounds. In turn, agreements on the assignment of risks

in the area of conditional suspensive obligations, as a general rule, should be recognized as invalid. Finally, agreements on assignment and pledge of conditional claims by default should be interpreted as agreements on assignment and pledge of possible future claims, and not as agreements on assignment and pledge of chances.

The second paragraph, "Non-contractual manifestations of the objectability of chances and risks from the conditional suspensive obligations"[11], renders analysis of the situations where chances and risks from the conditional suspensive obligations can manifest de lege ferenda or they already manifest de lege lata their non-contractual objectability.

The first situation in which the chances and risks from conditional suspensive obligations may manifest their non-contractual objectability is associated with unfair obstruction of the occurrence of a suspensive condition by a party to whom the occurrence of the condition is unprofitable as well as with harming the chance by a third party.

It is proved that in a situation of unfair obstruction of the occurrence of a suspensive condition subparagraph 1 of paragraph 3 of Article 157 of the CCRF should be interpreted as fixing the possibility, but not the need to apply the fiction of the occurrence of a suspensive condition under corresponding circumstances. The basic scenario in this case should be compensation for losses. At the same time, their size should be determined by the property value of the corresponding chance, which in turn is equal to the product of the price of the corresponding full-fledged right to the probability of the occurrence of a suspensive condition at the time of preventing such an occurrence. In other words, the practice of compensation for losses in this case should proceed from the objectability of the chances and risks of the parties to the conditional suspensive obligation.

As for harming a chance by a third party, it is noted that if absolute protection is fundamentally permissible in relation to a relative (binding) right, then such

[11] The content of this paragraph almost completely duplicates the content of our article (Valiev, R.R. "Non-Contractual Manifestations of Objectivity of Chances and Risks from Conditional Suspensive Obligations". Statute. 2020. No. 8. P. 125-144).

protection should be recognized as fundamentally permissible in relation to a chance from the conditional suspensive obligation.

The second situation where the chances and risks of obligations under the suspensive conditions can manifest their non-contractual objectability, is associated with bankruptcy, moreover, of both the conditional debtor and the conditional creditor.

It is argued that if expectation for the resolution of a suspensive condition may excessively delay the conduct of a bankruptcy case, the court must, at the request of a conditional creditor (if a conditional debtor goes bankrupt) or at the request of a bankruptcy trustee (if a conditional creditor goes bankrupt) and against the will of other interested parties (based, of course, on the adversarial nature of the parties), give a monetary assessment of the chance of a conditional creditor (respectively, the risk of a conditional debtor). Such monetary assessment should be equal to the product of the nominal value of the conditional claim and the probability of the occurrence of a suspensive condition (as determined by the court on the basis of the arguments of interested parties).

The third situation, in which the chances and risks from conditional suspensive obligations may manifest their non-contractual objectability, is associated with the enforced (non-bankrupt) liquidation of the conditional debtor.

It is indicated that if, in such a situation, expectation for the resolution of a suspensive condition excessively delays the liquidation process, the court, similarly to the bankruptcy, should give a monetary assessment of the chance of a conditional creditor, i.e. convert his conditional claim into a non-conditional one of a smaller size.

The fourth situation, in which the chances and risks from conditional suspensive obligations not only can, but de lege lata manifest their non-contractual objectability, is associated with universal succession (both on the active and passive side of the conditional suspensive obligation).

The example of inheritance is demonstrated to show that it is the chances and risks that are present with the parties of a conditional suspensive binding transaction

before the condition occurs are devolved, and not a possible future obligation because something that does not yet exist cannot be inherited. The obligation arises immediately on the heir from the chance/risk that has passed to him.

The fifth situation, in which the chances and risks from conditional suspensive obligations can manifest their non-contractual objectability, is associated with a collision (when foreclosure on an non-conditional claim secured by a subsequent pledge is ahead of the occurrence of a suspensive condition, i.e. the occurrence of a claim secured by a previous pledge) of the previous conditional pledgee, who has taken all measures available to him to minimize the risk of an early foreclosure on the pledged property by subsequent pledgees, and the subsequent non-conditional bona fide pledgee.

It is substantiated that in such a case, the subsequent non-conditional bona fide pledgee should have the right to file and satisfy a claim for a monetary assessment of the conditional claim of the previous pledgee, i.e. for the transformation of his conditional claim into a non-conditional one of a smaller size (this size, as in the other cases listed above, is equal to the price of chance-risk at this particular time and is determined on the basis of the adversarial nature of the parties).

Thus, five situations are shown in which the chances and risks from conditional suspensive obligations show de lege lata or may show de lege ferenda their non-contractual objectability. Of these five situations, such chances and risks manifest their non-contractual objectability de lege lata only in one case. Based on this, the following conclusion is made. The policy and practice of dealing with chances and risks from conditional suspensive obligations should be aimed at expanding the scope of non-contractual manifestations of the objectability of such chances and risks. Such non-contractual objectability consisting in the possibility, under certain conditions, of converting a conditional claim into an non-conditional one of a smaller size corresponding to the price of the chance/risk, should manifest itself in cases of unfair obstruction to the occurrence of a suspensive condition by a party to whom the occurrence of the condition is unfavorable, damage to the chance

by a third party, bankruptcy, both of the conditional debtor and the conditional creditor, forced (non-bankrupt) liquidation of the conditional debtor, the collision of the previous conditional pledge holder who took all available measures to minimize the risk of anticipatory foreclosure on the pledged property by subsequent pledgees, and the subsequent non-conditional bona fide pledgee.

Taking into account the conclusion of the first paragraph, the general conclusion of the third chapter of our study is formulated: the policy and practice of dealing with chances and risks from obligations under the suspensive conditions should be aimed at limiting the circulability of such chances and risks and at expanding the scope of non-contractual manifestations of their objectability.

The conclusion sets forth the main findings of the research and prospects for further development of the topic.

List of articles on the topic of the thesis published by the author in peer-reviewed scientific journals recommended for defense in the Dissertation Council on Law of the National Research University "Higher School of Economics":

1) Valiev R.R. Legal Nature of the Position of the Parties to a Conditional Transaction before the Occurrence of a Suspensive Condition // Legislation. 2011. No. 12. P. 10-19 (0.9 printed sheet);
2) Valiev R.R. Disposal of Potential Opportunities (Chances) Arising from Conditional Transactions // Legislation. 2012. No. 2. P. 19-28 (0.9 p.s.);
3) Valiev R.R. Property Status of Parties to Conditional Suspensive Obligation // Statute. 2020. No. 7. P. 157-177 (2.4 p.s.);
4) Valiev R.R. Non-Contractual Manifestations of Objectivity of Chances and Risks from Conditional Suspensive Obligations // Statute. 2020. No. 8. P. 125-144 (2 p.s.).