

THE SUPERVISORY BODY OF THE PROBATION SYSTEM IN IRANIAN LAW

O ÓRGÃO DE SUPERVISÃO DO SISTEMA DE LIBERDADE CONDICIONAL NA LEI IRANIANA

Seyyed Karim Masoumi **1**
Jaan Ahmad Aghaei **2**
Mohammad Reza Nazari Nejad **3**
Saeid Hakimiha **4**

Ph.D Student of Criminal Law and Criminology, Lahijan Branch, Islamic Azad University, Lahijan, Iran. E-mail: s.k.masoumi@gmail.com **1**

Assistant Professor of Criminal Law and Criminology, Bandar Anzali Branch, Islamic Azad University, Bandar Anzali, Iran. E-mail: j.ghaei@gmail.com **2**

Assistant Professor of Criminal Law and Criminology, University of Guilan, Guilan, Iran. E-mail: mohammad.nazari@gmail.com **3**

Associate professor of Criminal Law and Criminology, Imam Hossein University, Tehran, Iran. E-mail: s.hakimiha@gmail.com **4**

Abstract: According to legal scholars, imprisonment, despite its multiplicity of uses, has a devastating effect on the status of convicts and their lives in society, and it has a profound impact on vital disciplines, including business relationships, emotional and family ties. The Islamic Penal Code provides for the companionship of suspended sentences, suspension of sentences, semi-liberty, the probation, security and educational measures, and alternative punishments of imprisonment whose purpose is to punish or punish the offender as a whole. Exempt or reduce his punishment. The probation, one of these institutions, is the probation of the offender before the end of his or her term of imprisonment, under the conditions prescribed by the granting authority, including probation of supervision in the community and the possibility of its revocation if the necessary. Conditions are violated during the probation. Reforming the convicted person and returning him to life, reducing the prison population, preventing the repetition of crime, and maintaining order and security within prisons are among the goals of the institution.

Keywords: Supervisory bodies. Penalties. Prevention. Probation.

Resumo: Segundo os juristas, a prisão, apesar de sua multiplicidade de usos, tem um efeito devastador no status dos condenados e em suas vidas na sociedade, além de ter um profundo impacto nas disciplinas vitais, incluindo relações comerciais, relacionamentos emocionais e familiares. O Código Penal Islâmico prevê a companhia de sentenças suspensas, suspensão de sentenças, semiaberto, liberdade condicional, medidas educacionais e de segurança e punições alternativas de prisão, cujo objetivo é punir ou punir o agressor como um todo. Isentar ou reduzir sua punição. A liberdade condicional, uma dessas instituições, é a liberdade condicional do infrator antes do final de seu período de prisão, nas condições prescritas pelo poder concedente, incluindo liberdade condicional de supervisão na comunidade e a possibilidade de sua revogação, se necessário. Condições são violadas durante a liberdade condicional. Reformar a pessoa condenada e devolvê-la à vida, reduzir a população carcerária, impedir a repetição do crime e manter a ordem e a segurança nas prisões, estão entre os objetivos da instituição.

Palavras-chave: Órgãos de fiscalização. Sanções. Prevenção. Liberdade condicional

Introduction

According to the Islamic Penal Code of 2013, a criminal who commits a crime and is undergoing preliminary investigations and convictions and is sentenced to probation is sent to a competent court to investigate his case and the extent of the punishment. In the court, if there is a mandatory sentence, the sentence is pronounced. There are many issues that can change the form of punishment without altering the nature of punishment in all stages of punishment in practice. Therefore, the Islamic Penal Code provides for lucrative institutions, including the postponement of the sentence, the suspension of the execution of the sentence, the semi-probation system, the probation system, the security measures and the alternative punishment of imprisonment. Their purpose is either to exonerate or to reduce the punishment. A crime is a forbidden act against society that has a social response and guarantees its execution, punishment and security measures. In the course of developments, legal ideas have come to the conclusion that punishment is not merely effective but punishable by effective social protection measures tailored to the individual's characteristics, while punishing and ultimately punishing his return to society and preventing future crimes. In addition to estimating the goals of punishment, the rights of the victim of fraud must be guaranteed in order to promote social protection through restorative justice and by creating a triangle of delinquency, victimization and community, and interactions between them, in particular in relation to petty offenses, such as: impunity, punishment, punishment And the probation will allow this to be achieved. Supervisory agencies are contracted between a judge and a delinquent person who within the framework of criminal law regulations can use personal factors, records, family and social status, and compensation for damages to the victim and obtain his or her satisfaction from harsh and repressive punishments such as imprisonment and lashings. To either suspend the issuance of the sentence or suspend or suspend the sentence.

Concept, nature and foundations of superhuman institutions

Institution in the word means establishment, obedience, nature, basis, method, habit and habit (Moein, 2003, Vol. 4, 4862; Amid, 2010, 926) and its meaning in the rights of a set of norms that explain the law. In Emile Durkheim's view, institutions are the set of actions and thoughts an individual constructs, deals with, and imposes on them, and they impose themselves more or less on individuals. An institution is a system consisting of modes of practice and social roles based on one or a set of values and a system of enforcement and regulation". Affiliation in the word means to make someone happy, to tolerate and to benefit someone (Moein, 2003, c. 1, 204; Amid, Ibid, 82) and to refer to the rights to tolerate and delay payment until the end of the year for the benefit of the payer. And in jurisprudence, it means that the creditor should not be too hard on the debtor to pay off his debt, and to give him credit. Today, as a result of changing approaches to the philosophy of punishment, the approach of most legal systems in the world to criminals has been reformed, emphasizing the existence of liaison institutions. According to the Islamic Penal Code, the constitution is in line with the philosophy and objectives of the penal code. The application of the liaison bodies is in line with the principle of individualization of penalties. The principle of individualization of punishments is one of the progressive principles of punishment, which implies the application and execution of punishment commensurate with the personality, physical, psychological and social characteristics of the offender. That is foreseen by the legislature in the light of the nature of the offense or the criminal characteristics of the offense and by the judicial and executive authorities and may result in the intensification or suspension of penalties as the case may be (Benefactor et al., 2016, 42-41). The penal institutions provided for in Islamic Penal Code are divided into three categories: effective penal institutions, penal institutions delaying the execution of penalties, and penal institutions reducing penalties, the third category of which includes the system of probation and impunity. The probation is the probation of the offender before the end of his or her sentence, under the conditions provided by the granting authority. In probation situation, the offender is released after serving some time in prison while he is under supervision (Ashou-ri, 2015, 2). In the probation, the aim is to prevent children and adolescents who have been kept in educational institutions because of maladaptation or for whatever reason, to continue

imprisonment, and to gradually return to normal life. "The granting of probation is not a form of forgiveness or the generosity of the judicial authorities; it is a right granted by the legislator to the requisite conditions and a stage in the implementation of corrective and educational methods." There are important principles of criminal policy.

The purpose of granting probation to convicted inmates with different purposes is as follows:

- A) Reforming the convicted person and returning him to a clean and dignified life.
- B) Reduction of the penal population of prisons, criminalization of the environment and the connection of prisoners with professional offenders
- C) Prevention of and repetition of the crime,
- D) Maintaining order and security within prisons, granting probation to the continued good conduct of the prisoner while serving a prison sentence;

In the past, the nature of probation has been explained and justified in three ways. First, probation, which is a concession by the state to a prisoner, can be revoked because of his good behavior during his imprisonment and by committing a new crime or violating the prescribed conditions and conditions. The probation is a contract. The prisoner enters into a contract with the government, according to which the prisoner has the right to remain in the community until he / she follows the orders of the court and only under the supervision of the government. If the prisoner violates the contract, he will be sent back to prison. The last justification is that probation is merely a form of care that is placed in the range of prisons in the strict order of security necessary (closed prisons, semi-open prisons, closed prisons). Local prisons are known for their high security, followed by ratings of maximum security, middle security, and minimum security. The probation in this ranking is generally based on minimum security and free care in the community.

A prisoner may be transferred to a higher security prison for serious misconduct. The probation, which is a form of minimum security care, is transferred to a higher-security prisoner in the event of an error, which is regarded as the termination of the probation. In deciding whether to probation a probation, the severity of the offense, criminal record, adaptation to the prison environment, his or her compatibility with suspended care or prior probation, mental stability and the appropriateness of the probation are considered (Rezaee, 2010, 167).

While not all countries have their own system of criminal justice in their own countries, in many countries, it has also been criticized by liberals, conservatives, and prisoners. They believe that decisions on probation are very cautious and do not have objective criteria. For example, how does a judge with a decision-making authority ensure that a person is rehabilitated and no longer poses a threat to society? Or are the changes in the character and behavior of the offender formal and not conditional on obtaining a license? And are these changes permanent and permanent?

The origin of probation

The probation began in 5th century Britain when Alexander Maconucci, head of Norfolk Island Prison off Australia, invented a military system that brought prisoners closer to absolute probation after a gradual development. He created a system of two stages, the first phase of Absolute Prison, the next phase of hard working together in chains, then probation of movement in certain areas, then receiving a sheet with supervised probation in society, and finally complete probation. Maconucci laid the foundations for probation by believing in the gradual preparation of criminals for life. After Maconucci, Walter Craven allowed inmates to obtain early probation by gaining education-based privileges, hard work and good behavior. Those who achieved early probation with sufficient points had to comply with the terms and conditions of their probation. The local police were responsible for monitoring these conditions and instructions.

In the United States, probation was first tested in the state of New York in the United States (Assyria, p. 47). At the point of entry, each offender was ranked second. Good behavior after six months allowed him to enter the first stage, which could be subject to parole, and his improper conduct led him to the third stage, which had to return to the second stage with se-

veral months of decent behavior (Gholami, 2001, 116). In 1961, Article 39 of the former law, by accepting the provisions of the aforementioned article, made probation exclusive of imprisonment and reduced the term of imprisonment to half of the sentence imposed; Finally, Article 38 of the 1991 Act was amended and supplemented by a note to the Islamic Penal Code of 1998, which included imprisonment and detention (Norbah, 2012, 474; Akhovat, 2006, 124).

Four functions of probations

Rehabilitation: The probation is valuable in maintaining prison discipline and encouraging diligent rehabilitation efforts among prisoners. Therefore, most inmates believe that confessing to a crime will help early probation (Rezai, 173-172). **Slimming the severity of punishment:** The probation allows governments to propagate harsh punishments to combat crime and heighten the intimidation aspect of punishment. **Adjustment of Inequalities and Criminal Discrimination:** Inequality in penalties occurs when criminals receive completely different penalties with the same crimes and records. Unequal punishments cause such differences because of the judge's discretion in determining the amount and sometimes the type of punishment and the discretion to reduce the punishment without specifying a specific provision, factors such as the values, views, feelings, and criminal philosophy that the judge adheres to.

Types of Probation

In our country, probation is limited to the punishment of imprisonment (Article 58 BC) and the punishment of exile to habitual offenders (Article 5 of the Code of Safety and Education). In probation from exile, the period of exile may be determined by the court and may be for an indefinite period, but at least 3 years and if longer than three years, at least for the duration of his sentence in exile. If the exile is proven unnecessary, the director of the exile and the prosecutor's request may be granted a probation, which is called the probation. And if he leaves the exile to commit a new crime, the court will order that he be remanded in custody. This kind of probation includes the exile of Articles 282, 284 and 285 BC including war crimes punishments.

The other is probation, which, in contrast to probation from exile, involves first punishment and the second involves offenders sentenced to imprisonment for the first time and does not include criminals like exile. The Probation of Imprisonment in Articles 58-63 BC has transnational scope (Rezaei, 2010, 180).

Some jurists hold that the realm of probation is limited to the punishment of imprisonment consisting of a wide range of temporary imprisonment and pretrial detention. The term "imprisonment" in Article 58 BC excludes the following incarcerations: (Ardebili, 1372, 227)

- Imprisonment for convicts who have been sentenced to imprisonment for failing to comply with the provisions of the supplementary punishment (Article 24 BC)
- Imprisonment (detention) of those who are convicted of non-payment of fines but ultimately detained on remand (Article 1 of the Financial Conduct Act, 2015)
- The sentence of mohareb imprisonment, which is condemned to deprivation of liberty (deportation) and shall serve a term of imprisonment in accordance with judicial procedure. Imprisonment in exile has also been a punishment.

Effects of probation

A) During the trial, the convict shall temporarily serve the remainder of the sentence of deprivation of liberty and enjoy absolute probation, unless the court has imposed restrictions. Subsequent penalties are in place and supplementary penalties such as compulsory residence will remain in place (Bahri, 2001, 469; Ardebili, 1992, 232-231). If the court introduces the released prisoner to the dynamic institutions for training courses, some kind of monitoring of the prisoner's behavior will be applied. Improved support measures and regulatory oversight are likely to increase the likelihood of imprisonment. However, in some offenses ranging from five to eight years in prison, electronic surveillance with the consent of the inmate is recommended within a specified location (Article 6 BC).

The probationary period covers the rest of the sentence. But her diagnosis is in the range of one to five years with the court. If, during this period, the condemned behavior is proven to be good, then it will enjoy complete and definitive probation (Ardebili, 233).

B) After the expiry of the trial period, he or she is condemned to probation of action and to the same degree as one who has fully suffered the punishment (Bahri, 2001, 469).

C) Failure to Perform Probation Assignments: When convicted on probation, he or she commits one of the following acts upon request by the prosecutor and a court order to serve the remainder of the sentence shall be returned to prison and the term of probation shall not be considered as a sentence:

1. Repeat in violation of the court's statutory limitations, despite formal notice.
2. When it is proved that the person exercising his or her liberty is not worthy of the trust he or she has gained (Bahri, 469).

Abolition of probation

Failure to obey orders or commit some crimes during the period of the probation will aggravate the sentenced status (Safari & Varasteh, 2015, 185).

Added period of probation

The court is obliged to specify the orders and restrictions that the convict is obliged to comply with during the probationary period and to provide the sentencing court with the information (Article 6 BC). The nature of the instructions is "a series of remedial and sometimes therapeutic programs." (Ardebili, p. 211), whose adherence has led to the successful completion of the condemnation period, a conviction may not be deliberately obeyed by orders that specify what kind of enforcement warrant the legislator has provided for such a conviction. Whose adherence has led to the successful completion of the condemnation period, a conviction may not be deliberately obeyed by orders that specify what kind of enforcement warrant the legislator has provided for such a conviction (Safari & Varasteh, 2015, 186). The legislator states in Article 4: "When convicted of un-probation without due notice of court orders, Barawal shall be added to his probation for one to two years." Therefore, the court can only add the convicted person for conditional release if they do not follow the instructions which are not due to non-compliance by reason (Safari & Varasteh, 186).

Doing sentence of prison to serve the original sentence

In two cases, parole may be revoked: first, the convicted person commits a repeat offense after being subject to legal enforcement as a result of failure to comply with court orders. Secondly, the convicted person shall commit the offenses provided for in Article 2 of this Convention. Article 7 reads as follows: "In the case of repeated (non-compliance with court orders) or committing deliberate crimes, punishment, retribution, blood money or punishment up to seven, in addition to the new offense, the remaining term of imprisonment shall also apply."

If the convicted person commits a new crime (Article 6 BC) for the second time, the rest of his sentence will be executed by the court in addition to the new crime. With the revocation of the probation, the convicted person will be sent back to prison. The revocation of the probation due to a new crime is commensurate with the date of the crime and while he was detained on new charges, he is not being held in prison. The record of conviction and the commission of a new crime, in certain circumstances, are considered a repeat of the crime and the court is required to increase the punishment of punishment (Ardebili, p. 233).

The Positive Conditions of the Probation System

The probation request by a convicted person and its granting by a competent authority will require procedural and procedural steps, such as the recommendation of a prosecutor or judge to enforce criminal penalties and review the claim by the issuing court.

Formalities: According to Article 39 of the former Penal Code, the issuance of probation was subject to the recommendation of the State Organization of Prisons

and the security measures required by the prosecutor or supervising prosecutor.

Under the new penal code, the proposal is to probation a probationer with a prosecutor or judge to execute criminal sentences. The head of the prison will prepare the prisoner's report on Hassan Khalq and his behavior and confirm it to the execution judge, and the judge is required to submit the probation to the issuing court (Shams Natri and Ahmadi Nektour, 2015, 147).

In Article 60 BC Adopted in 2013, the conditions and conditions that the convict must observe in probation are the orders contained in the postponement of the sentence pursuant to Article 43 BC. Adopted in 2013; the order is in the discretion of the court and the enforceability of probation under the new law is both simple and guarded (Ardebili, 2014, vol. 3, 232).

In Article 59 BC, approved 2013: "The term of a probation shall include the rest of the sentence, but the court may change its term, however, it may not be less than one and more than five years, except where the remaining period is less than one year, which is equivalent to the rest of the prison term. "For example, a person with twenty years 'imprisonment under Article 58, after ten years' imprisonment may enjoy probation. That is to say, ten years, but the term of probation may not be less than one year and not more than five years. Thus, the term of imprisonment would be five years (Shams Natri & Ahmadi Nathan, 150).

Substantial and personal circumstances

Under Iran's penal code, any conviction and punishment is not subject to the conditions of probation of expression. According to Article 85 BC, adopted in 2013, only those sentenced to "imprisonment" are subject to the conditions of probation. In order to know how a convicted person responds to punishment and to obtain the conditions required by the legislator to use the privilege of probation, one must usually spend some time in prison. The following are some of the conditions of use of a condemned person's parole:

A) Sentenced Correction and Continuous Good Conduct: The legislator has recognized those who are entitled to the exercise of probation who have consistently shown good faith. It should never be confined to the mere appearance of prisoners who may be very motivated to attain their probation (Ardebili, p. 229).

B) Confidence in the future of not committing a crime: His behavior and behavior during his sentence indicate that he will no longer commit a crime after his probation (Shams Natri & Ahmadi Nate, p. 145-144).

The above cases must be approved by the judge following the report of the prison chief and the judge is obliged to review the prisoner's situation and, if appropriate, submit a proposal for probation to the court. Investigation of the prisoner's record is necessary for the prison judge; otherwise the court will consider the probation and sentence of the prisoner and issue a sentence (Shams Natri and Ahmadinejad, 145-144).

Privative conditions of Probation System

A) Determination of crime indemnity: The condition for granting probation is the determination of the crime indemnity by the convict. The offender is obliged to make a payment or to compromise with the offender. In order to obtain the satisfaction of a private claimant under paragraph 58 (c) of Article 58, the court shall, as long as the condition is not satisfied, afford the defendant as long as he can afford to pay or arrange for the private defendant to pay or arrange for payment. It is not possible to issue the probation.

B) No record of use of probation: The legislator in the new Penal Code abolishes the requirement of sentencing to imprisonment for the first time and in paragraph 58 of Article 58 BC. It stated: "The convict had not previously used probation." If the sentenced person has a three-year prison sentence but has not yet exercised his or her probation, he or she may use the privilege if the legislator so desires and achieves the conditions required by law. This legislative approach is commendable act in terms of taking into account the rights and interests of the convicts and achieving the corrective-educational aims of punishment (Shamsnatori and Ahmadi Nate, 2015, 139-137). The above cases have been confirmed by the judge after the

report of the prison chief and the judge is obliged to examine the prisoner's situation and, if appropriate, to submit a proposal for the probation period to the court. Investigation of the prisoner's record is necessary for the judge of prison, and otherwise, the trial court is obliged to review the prisoner's record and to issue a prison sentence if necessary (Natari and Ahmadi Nektor, p. 14).

Conclusion

A favorable criminal policy can help to regulate criminal law and thereby prevent a comprehensive response, through mechanisms such as criminalization and decriminalization, and the enforcement of prisons such as the suspension and suspension of punishment and probation. The probation is a constitution that provides that if convicted in the course of probation, the judiciary responds positively to the confidence of the judiciary and enjoys definitive probation. Conduct of the probation for the benefit of the convict and the community, by assisting in the correction of the offender, encourages him to return definitively to the center of the family and society. In addition to reforming the offender and reducing government spending, it also reduces the number of inmates and reduces the disadvantages of imprisonment. In this regard, the Iranian legislature has long taken effective steps to implement the policy of penalization and in particular detention to prevent crime by accepting the establishment of a probation judiciary. Conditions of granting probation may, upon entry by the offender, be communicated to him by the Judicial Circuit or the prison. This will cause the inmate to deliberately, from the outset, seek to obtain the conditions required by law and reform he, thereby avoiding imprisonment-related offenses such as committing unlawful imprisonment and reforming Walk.

References

Akhout, Mohammad Ali. (2006). Detailed Issues of Public Penal Law, Tehran, Saberion Publications, First Edition.

Amid, Hassan. (2010). Amid Persian Culture, Tehran, Rahyab Novin Hoor Publishing, First Edition.

Ardebili, Mohammad Ali. (2014). Public Penal Law, Vol. 3, Tehran, Amnesty Law Foundation, Thirty-third Edition.

Ashouri, Mohammad. (2015). Alternatives to Prison or Intermediate Punishment, Tehran, Tendency Publication, Third Edition.

Bahri, Mohammad, (2001), Public Penal Law, Tehran, Majd Publishing, First Edition.

Benefactor, Hamid et al. (1986). Investigation of Drug Enforcement Agencies, Detective Journal, Ninth Year, No. 39, summer.

Danesh, Taj Zamani. (2014). Criminal Proceedings of the Juvenile Justice in Comparative Law, Tehran, Meydan Law Foundation, Fifth Edition.

Gholami, Hossein. (2001). Forensic Evaluation of Two Institutions of Criminal Law: Suspension of Care and Probation, Journal of Law and Policy Research, Third Year, No. 5.

Imani, Abbas. (2016). Culture of Criminal Law Terms, Tehran, Knowledge Treasure Library.

JafariLangroudi, Mohammad Jafar. (2008). Law Terminology, Tehran, Knowledge Treasure Library, 19th Edition.

Moein, Mohammad. (2003). Persian Culture, Vol. 4, Tehran, Amir Kabir Publications, Twentieth

Edition.

Moein, Mohammad. (2003). Persian Culture, Volume 1, Tehran, Amir Kabir Publications, Twentieth Edition.

Norbah, Reza. (2012). Public Penal Law, Tehran, Ganj Danesh Publications, Thirty-Fourth Edition.

Rezaei, Gholamhossein. (2010). Suspension and Postponement Strategies in the Criminal Process, Tehran, Maid Publishing, First Edition.

Safari, Ali and Varasteh, Hamid. (2015). Suspension of Punishment and Provisional Probation, Tehran, Majd Scientific and Cultural Assembly, First Edition.

Shams Natri, Mohammad Ebrahim and Ahmadi Nader, Zahra. (2015). An Introduction to the New Legislative Approaches to the Probation System, Quarterly Journal of Legal Perspectives, No. 74, Winter.

Recebido em 16 de março de 2020.

Aceito em 09 de outubro de 2020.