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Suspension of Punishment with A Crime Prevention Approach in the UK Legal System

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Abstract: *The implementation of criminal justice has been the subject of human minds since the beginning of creation, and throughout history, the criminal law has faced different perceptions and reactions. The social reaction to the criminal phenomenon is essentially punitive in the form of security measures which leads to the realization of the objectives of the penalties. Providing these objectives will only be possible if the punishments are implemented with urgency and certainty, but in some cases, regarding the conflict of the urgency with other principles governing punishment, enforcement of the sentence is delayed. Therefore, due to the attention paid to the perpetrator's personality and the realization of the objectives of the penalties in non-criminal procedures, enforcement of the sentence is delayed. The legal entity of "suspension of execution of penalty" is a customary legal initiative that started with the Positivism School of the Criminal Law and reached a partial development in the social defense school. The suspension of enforcement of punishment based on the principle of individualization of punishments is aimed at the idea that according to the case of the perpetrator's personality, with the aim of treatment and rehabilitation along with returning the person to the society, the result of which is the prevention of repeated crime. Here, we are taking into account the UK legal system and the effect of suspending the enforcement of punishment in preventing repeated crimes attracting the legislator's attention to the choice and adoption of the best decisions regarding the suspension of the enforcement of punishment with the principle of preventing repeated crimes. Ultimately, the suspension of the punishment enforcement in its modern concept involves certain features such as the existence of an independent structure within the framework of the criminal system for supervising the perpetrator in order to prepare him at the time of suspension helping him in obtaining normal behavior in society. If the use of the suspension is in the framework of the standard conditions, it would be possible to re-socialize the perpetrator, and this requires the action of the organizations as well as the structure of the authorities and experts who are responsible for realizing this human duty for the perpetrator's reform and treatment.*

Keywords: *Suspension, Suspension of Punishment, Imprisonment, Repeated Crime, Probation, Crime Prevention.*

INTRODUCTION

The suspension of the punishment enforcement is one of the powers that the legislator has given the judge with the aim of individualizing the punishment. The suspension of the punishment enforcement, on the one hand, is in favor of the perpetrators in terms of the opportunity provided for them to repair and compensate for the error, on the other hand, it is in favor of the society in terms of providing the community with the possibility of using this group of perpetrators and not imposing maintenance costs (Nourbaha, 2002).

By virtue of this authority, the judge may, with due observance of legal conditions, suspend the enforcement of the sentence for a specified period of time. Possibility of suspending the execution of a penalty is an option that has been delegated to the judge and beyond which there is no right for the perpetrator. Since the suspension of punishment enforcement is never known as a right, even if all legal conditions are in place, the judge will never be required to suspend the execution of the sentence (Stephanie and Gaston et al. 1998).

However, the legislator, with delegating the power to suspend the execution of the sentence, has provided the judge with the possibility of adopting appropriate measures to individualize the punishment and reform the perpetrator. According to a lawyer, "Criminal policymakers hope that, during the suspension period, the convicts will continue to strive for the impunity of punishment and its effects and due to fear of the practice of punishment resulting following the court orders to reform their behavior" (Ardebili, 2009).

Other reasons stated to support giving this authority to the judge and the institution of the probation is that "suspension of punishment enforcement for non-threatening perpetrators, especially first time perpetrators, and those convicted of short-term imprisonment, may not only have not a positive and constructive effect, but also makes it dangerous for them to live with dangerous perpetrators turning them into dangerous people, while receiving the news of their punishment has a more deterrent effect. Suspension of the punishment enforcement is a form of punishment, because the perpetrator cares for his reform in the fear of the execution of the punishment "(Zera'at, 2006).

Undoubtedly, in spite of the great merits of suspending the enforcement of punishment, the exercise of this power, as well as other jurisdictional powers, must be based on logic and wisdom. As some lawyers have emphasized, "this entity should not be used haphazardly, as it is not a means of mercy and affection, and should not damage the justice and deterrent effect of punishment, otherwise, if applied to those who do not deserve it by subtlety and non-observance and without its rules and principles, it's results will be completely reversed "(Zera'at, 2006).

Thus, on the one hand, the unconditional and emotional use of the power to suspend the punishment enforcement for the convicts who do not deserve to benefit from this privilege results in harmful consequences for society and, on the other hand, the use of this discretion for qualified prisoners is also assessed as a form of judicial tactlessness and abuse of legal authority.

Issue 1: Effects of suspension in British law

Section 1: Punishment suspension

The terms of suspension of punishment enforcement are as follows:

Clause 1: surveillance of the convict

Under section 26 (2) of the Authority of Criminal Courts acted in 1973, if an individual is sentenced to more than six months and less than two years' imprisonment for a crime and the court suspends his conviction, he/she may be subjected to the suspension under a punitive care for a period that does not exceed the duration of the suspension of punishment. In this case, a copy of the verdict must be sent to the convict and one to the supervisory court. The perpetrator who is to be under supervision is required to be in contact with the officer and obey their occasional instructions and inform them of his change of address. Therefore, the court cannot suspend the punishment of a convicted perpetrator who has been sentenced to more than six months for committing more than one crime, however according to sections 26 (2) and 54 of the 1973 law, this period can be reduced by the Ministry of the Interior, or the least limitation can be totally canceled, in which case the suspension of punishment enforcement may be imposed on a criminal who has been sentenced to less than six months in prison.

Clause 2: Termination of the suspension of the punishment enforcement before the due date

The suspension of the enforcement of the sentence shall be terminated before the due date in the relevant sentence where the issuing court makes one of the following three acts:

First, according to Section 28 (6), Part A of the Criminal Justice Power Act of 1973, the court orders the punishment which has been suspended to be enforced on time.

Secondly, the court orders the termination of the punishment suspension at the request of the supervisor or the convicted person. According to section 26 (9) of the 1973 law, if the suspension order was issued by the Royal Court and the court was given the right for early termination of the sentence, the Royal court can announce the termination of suspension, and in other cases, the early termination of the suspension will be the responsibility of the Peace Tribunal, which acts in the area of jurisdiction.

Thirdly, the court can change the order of suspension of punishment. In accordance with Section 26 (8), Part B, of the 1973 Act, a court may modify a supervision suspension as amended in accordance with section 23 (1) (c) of this Act, which may be modified so that the suspension continues for two years after the date of the change, though the convict is on the late of the previous suspension on the date of this change, which will actually be as the issuance of a new suspension order.

Issue 2: Lifting of the suspension order in British law

Section 1: Probation

The terms of probation of punishment enforcement are as follows:

Clause 1: supervising the convict

Probation includes:

Clause 1: Canceling the probation due to violation of the requirements and conditions

If the probation watchful notices that the convict violates the requirements of the probation, he/she must notify the court or the judge involved in the relevant jurisdiction for that court.

In accordance with section 6 (1) and (2) of the 1973 Criminal Justice Act, if, during the probation, the Peace Court Judge is informed that the convict refuses to comply with the requirements contained in the probation order, he can issue a summons or a detention order to imprison a convict or ask for his presence at the peace court qualified in that jurisdiction area; if the mere refusal is considered as the violation of the prescribed condition, there is no requirement for psychological treatment unless it is proven that the person has been in special conditions.

If the competent Peace Tribunal establishes that the convicted person has complied with the requirements of the violation, he/she can act without any judgments regarding the continuation or discontinuance of the probation in one of the following three ways:

1. Impose a fine of up to 50 pounds on the convicted person;
2. In case of need, require the convict to be present at a care facility;
3. Or issue the order of performing public works on the perpetrator.

Another way is that, under section 5 (2) of the 1973 law, if the convicted person is convicted in Peace Tribunal, the Peace Tribunal cancels the probation and issues the punishment order in case of the crime on which the order has been issued.

Moreover, under the English court's case-law, the court could also issue a second probation order to the convict, although, in total, the convicted person has been under probation order for more than three years, in which case the initial probation order is neutralized.

Despite this discretion, in the event of a clear violation of the requirements of the initial probation by the convict, the court should be very careful in awarding the new probation (Hoeg et al., 1999, 71).

However, under section 6 (4) of the Criminal Justice Act 1973, if a probation is issued in a royal court, the Peace Tribunal should send the convict to the Royal Court under control or release with a bail, with the presence of the convicted person, provided that the convict has violated the requirements set forth in the crime order (pursuant to sections 12 and 13 of the 1973 Act, whether the convict has complied with the requirements of the offense must be judged by the court and not be transferred to the jury). The royal court may, without deciding whether to continue the probation, require the convict to a fine of 50 pounds (Section 6 (6), Section A) or to carry out public works (Section 6 (6), Section B); Or, sentence the convict of punishment for the commitment of the offense on which the probation order has been issued (section 6 (6) (c)).

Furthermore, in accordance with a judicial procedure such as the Peace Tribunal, the Royal Court may also re-grant the sentenced person a probation order, in which case the initial probation shall be ineffective, and the total duration of the two probations may also exceed three years.

Issue 3: Suspension of punishment

The terms of suspension of punishment are as follows:

Section 1: Violation of the requirements in supervisory suspension of punishment

Under section 27 (1) and (2) of the 1973 Criminal Justice Act, if during a punishment supervisory suspension period, it is proven to the judge of the Peace Tribunal working in the jurisdiction area determined in the suspension period that the offender has violated the legal requirements set forth in section 22 of the 1973 Act, he/she may require the offender to appear before the peace tribunal in the judicial area he/she is deployed through the summons or the detention order. The court where the offender is present or attended, if is convinced that the offender has refused to comply with the legal requirements without any excuse, can convict the offender for a fine of up to 50 pounds without judgment on suspension action.

Such a fine is the same as a fine that the offender is convicted when issuing the conviction verdict.

Issue 3: Suspension of punishment with a crime prevention approach in the UK legal system

The minimum age of the offender in probation has been considered as 16 years and in most cases, the offenders are young and old people who have not been mentioned in the law in suspension of punishments, and the law has general reference to those who have been sentenced to imprisonment below two years.

In probation, if the judge of the court considers the issuance of the probation order appropriate according to the circumstances of the crime and conditions of the person, issues the probation order before issuing the conviction and determining the punishment, however in the punishment suspension, the judge suspends the punishment, if necessary, after issuing the conviction verdict.

The duration of the probation is a minimum of six months and a maximum of three years, however the punishment suspension is at least one year and a maximum of two years; the probation seems to be better in terms of the minimum duration.

In the probation, the offender is under constant control and supervision of a surveillance officer, but this surveillance is casual in suspension, that is, at certain times, the offender introduces him/herself to the officer and tells his/her situation to him.

In the case of a probation, it is possible to convert a probation into a conditional release, but no such case has been foreseen in the probation suspension.

Investigating the 'evolution of probation' in British law reveals that, despite probation, the country's legislatures ultimately have been obliged to accept a simple suspension.

In the UK, there is a large body for administering and controlling the supervisory suspension punishment, however the cost of this body is only one tenth (10%) of the cost to be spent in the event of imprisonment of the suspended individuals. It seems that the creation of such an organization or institution supervising and helping suspended criminals by the surveillance officers, as well as assisting the court in handling and controlling the criminals, has a fundamental role in achieving a successful outcome of suspension and, in essence, the concept of the supervisory suspension punishment will be valid with the establishment and setting up of such an organization and officers.

Moreover, by reducing the cost burden on prisons and other costs imposed for society by imprisoning the initial perpetrators of crime, the administration of this organization will not only have no additional financial burden, but it will ultimately lead to a major economic saving, meanwhile, the human and social benefits and short-term and long-term benefits are remarkable and significant.

Furthermore, in the supervisory suspension punishment, the convict is placed under the watchful eye of an observing officer, and may also receive his assistance and guidance.

After the cancellation of the supervisory suspension due to the commission of a new crime or the violation of the court orders and failure to comply with the conditions included in the suspension order, in the British law

in this case, the judge of the court, in addition to being able to order execution of all suspended sentences, has this discretion to commute the suspended sentence and put it to the execution in its time, or expand the trial period, or not take into account the suspended punishment at all.

Another point worth mentioning is that in suspending the execution of a sentence, whether simple or supervisory, in suspending the punishment in the UK, the judge first issues the conviction order, and then, if the conditions of benefiting from suspension are available for the convicted person, will suspend it, but in probation, without issuance of a sentence order, the judge uses probation, which is the same supervisory suspension, as his recognition. In the author's view, the suspension order prior to conviction seems to be better, and that a punishment is not issued, more likely will make the convict try to improve his behavior with the hope that performing the court orders regarding the issued verdict and the good and proper conduct, no punishment sentence will be issued for him anymore.

In the "Form Terms" section, the UK legislature, with more precision than the rules, has addressed the time of announcement of the suspension, the need for cogency of the suspension decision, determination of the length of suspension and the need for announcement of the court to the offender, which is not particularly evident in the laws of the UK.

Regarding the terms of suspension, in the author's viewpoint, the suspension conditions are easier in the UK, for example, the UK legislature does not restrict anyone who has a criminal record, and according to judicial procedures, such cases can not impede the suspension or probation of punishment. As we know, effective criminal conviction is a conviction that deprives the perpetrator of a series of social rights identified in legal acts, however such cases are not observed in the UK laws. In general, according to the author, the UK laws in suspension are generally to the benefit of the convicts, in addition, in England, more people are able to use the suspension according to the perceived tolerance of the lawmakers regarding the suspension duration and its conditions, and more assistance is provided by supervisory officers and related organizations and bodies.

It is clear that if the courts do not use this discretion except in appropriate cases, this could undermine the basis and objective of the punishment suspension, which is to prevent the initial perpetrator from entering the criminal environment and preserve and consolidate his family, career, and social statuses, and expose the foundation and philosophy of the punishment suspension to disappearance. In contrast, if the judges and the courts issue punishment sentence once dealing with the case and do not pay attention to the criminal and his background and conditions for committing the crime, this may create grounds for repeating the crime, hence the same primitive criminals become dangerous criminals that can easily create the root of corruption and insecurity in society, and this corruption and insecurity gradually involve the entire community.

Conclusion

The implementation of penalties in terms of the complexity of its management has not been successful in terms of the impact of convictions and the prevention of recurrence of crime. Today, it has been established that the punishment, in particular the imprisonment penalty, in terms of the overall negative impacts on the convicts, is not only much effective in prevention of re-offending the crime, but it enhances the repetition of the crime and the variety of its practices and the training of criminal offenses; however, it does not mean that punishment alternatives, including the suspension of execution of the punishment, which is the subject matter of the present project, always and at all times can be a good and effective solution to prevent repetition of crime and retraining of the criminals; rather, the effectiveness or ineffectiveness of the institution of suspending the execution of a punishment, regardless of its nature, sometimes requires fundamental reforms and depends on the adoption of other measures and decisions that, without regard to them, one cannot expect the lack of return of the perpetrators to conduct the crime or a reduction in the rate of repetition of crime.

The application of this replacement policy should be accompanied by the strengthening of the judiciary bodies of the relevant organizations and the control bodies as well as surveillance officers and social supervision.

There should also be appropriate planning for the reform of convicts and public participation in order to link convicts and society through the training of individuals and institutions involved in social order and control, such as family and workplace. In this regard, it is evident that the experiences and theories of punishments and criminology, and the United Nations recommendations must be exploited for the establishment and expansion of the principle of individualization of punishment and the correct implementation of it, which is the most important principle regarded in the doctrine of criminal law.

It means that the convicted individual's personality should be identified physically (psychologically), psychiatrically (psychological disorder), psychologically (recognizing the degree of emotion and degree of understanding and perception), sociologically (family, educational, religious, and political background) by social workers and look attentively at the crime and its importance. As the theorists and legislators of various countries have accepted that no crime can be completely eliminated, similarly, the alternatives to punishment or penalty cannot be applied everywhere. It is true that suspending punishment is a way for reform a criminal and prevent the repetition of a crime, but it should be noted that this method, despite the positive effects that it could have, is not a version that applies to all individuals, rather it should be prescribed by studying with complete accuracy and with regard to the person who committed the offense and the circumstances and conditions of the case. If the criminal proceedings are not based on the studies of the criminal sociologists and the environment the criminal has grown up, and content merely on sentencing the criminal act, which is the execution of pre-made orders, the criminal will not be treated and the roots of corruption will not be dismantled from society.

In order to achieve this goal and in order to identify the aspects of personality of the accused or the offender, and hence, individualizing the judicial decisions, the filing of a case under the name of the person's identification file along with the case file is considered a necessity of a fair criminal procedure; in the United Kingdom's legal system and some other legal systems, this case was explicitly foreseen by the legislator, and the formation of this case to assist most offenders, especially juvenile delinquents and young people seems necessary.

Another point that can be useful in preventing repeat of crime is that legislators must pay attention to all aspects of the suspension when approving its related laws, one of the most prominent of which is supervision after the end of the punishment suspension course, meaning that judges do not only consider the past and present conditions of offenders at the time of issuance of a suspension sentence, but also, if necessary, after the end of the period, provide the convicts with the necessary support. For instance, one of the areas of people's tendency towards criminal acts, after the termination of the suspension, is the lack of job and the ability to work at the community level, so filling this gap, even with limited facilities for a group of clients, can lower the statistics of committing of crimes among this group of the community.

Ultimately, since the suspension of execution of a punishment in its modern sense involves certain specifications, such as the existence of an independent structure within the framework of the criminal system for supervising and controlling of the perpetrator in order to prepare him at the suspension time and obtaining normal behavior in society, one could hope to re-socialize the perpetrator in case of using the suspension in the framework of the standard conditions; achieving this goal requires the organizations, the structure of the authorities and experts who are responsible for realizing this human responsibility for the reforming and treatment of the offenders.

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