

DEFERRED PROSECUTION: AN AGREEMENT MANIFESTATION OF CRIMINAL PROSECUTION

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Abstract. Criminal justice always trying responds to crime via one-sided approach. Today the approach due to legal reasons, criminological, and management are faced with fundamental changes. Agreement of prosecution is the main changes that the will of the parties to criminal case recognized. Delayed prosecution of a criminal case that, for the first time in the code of criminal procedure act of 2013 was anticipated, among the methods of this strategy in the pre-proceedings that the judicial authority after an agreement whereby the accused and the victim, special conditions can be qualified as criminal prosecution for a certain time delayed. In this paper, after defining the concept of criminal prosecution agreed to approach the legislator in the Code of Criminal Procedure concerning the postponement pursue.

Key words: deferred prosecution, agreement, offenders, judicial officials

1. Introduction

Gradually, under the influence of multiple developments in the field of criminal policy and especially because of the ineffectiveness of traditional criminal justice model in reducing the rate of delinquency new forms of criminal justice model have emerged. Restorative agreement and justice are the most obvious examples of this which in the light of the criminal justice system, out of the matter/command and soon had regressed and to accept flexibility in the field of criminal justice has gone. This attitude by accepting "criminal tolerance" to point out that crime is a social human phenomenon and thus should be considered when answering this feature. Paving the way for intervention offender and victim as the key actor in the process of criminal justice decision-making process is the most significant of these aspects in light of this determination and opinion of offender and the victim in different decision-making of the criminal justice recognized.

One of the most obvious innovation in the Code of Criminal Procedure Act of 2013 is privatization deal or prosecution of criminal case and the withdrawal repressive aspects of criminal networks is made to delinquent dynamic role in the criminal process. In other words, the aim of this strategy is the decision-making process of devolution of power to the offender, which can be approached most prominent symbol of civil rights and criminal law. Thus, criminal law, civil rights by copying the teachings of toys criminal and judicial authorities in the process of equalization will pursue criminal case has provided. Sometimes referred to withdrawal strategy to pursue criminal case and reduce the type and amount of charges and answer leads; so that the judicial authorities based on legal options to determine the fate of the offender's criminal case shall persist. Therefore, the strategy of how to implement justice in the particular circumstances of the offense and offenders transferred to the judicial authorities. The strategy is a way of pursuing criminal case postponed and the judicial authorities may be expedient in the light of the survey, once eligible and agreed with the offender and victim satisfaction adopt. This method makes the process stalled criminal court stage and offenders will be relieved of punishment. Iran had no history of such practices in the context of criminal policy and for the first time in the Code of Criminal Procedure Act of 2013 is anticipated.

In this section, before the institutional review deferred prosecution agreement as a manifestation of the strategy of pursuing criminal case investigate the nature and principles of agreement adaptive approach. Hence the legal nature of the

strategy is clear and we will then examine the foundations of this strategy.

Agreement deferred prosecution in the criminal case is very similar to the contract, because it no judicial determination, the victim and offenders gives the approach agreement aspect. Hence, the question: what is the legal nature of the agreement between the parties? Agreement criminal case pursued is a strategy which in the light of judicial and pre-trial offenders, the access to proper ways to compromise/reconciliation talks with the criminal. Accordingly, the strategy legally and among the contracts is as "signing of peace".

So agreement or private prosecutions in criminal proceedings with regard to the rules governing the contracts discussed (Niazpour, 2011).

In fact, the terms of the agreement the prosecution of a criminal case is approach that in light of judicial authority and offenders about how to determine the fate of the criminal case decision if offenders and indifference to its commitments, the strategy of the (judicial) cannot be peace as contract required him to perform his obligation; but just could again pursue the criminal case and the execution of penal sanction resume twice. Thus, the above-mentioned strategy has contractual nature, in the legal sense, not only because of reconciliation between parties to criminal (judicial, victims and offenders) is somewhat similar to marriage peace. Therefore, the agreement pursuit of strategic compromise circuit that causes withdrawal traditional methods provide a response to criminal behavior and a new approach, namely through the recognition of the will of offenders criminal justice and victim in deciding how to respond to the penal offense attention (Ibid., P. 25). For example, in a manner delayed criminal case to ignore the commitment by the criminal prosecution of the withdrawal method and planned implementation of the first call. According to Article 82 of the Criminal Procedure Code "... In this case, the judicial authorities charged with observing the provisions of Article (81) of this Act subject is required to run some commands. In case of non-implementation of commitments agreed by the accused without reasonable excuse at the request of the plaintiff or the defendant, the suspension canceled and continues the chase (Khaleghi, 2014, p. 82).

2 Foundations of prosecution agreement

Prosecution agreement or privatization strategy is not based on a different concept for thinking. The overall concept arose from philosophical thoughts, legal and social. Each of the intellectual foundations of the strategy, in forming an opinion of the legal systems of punishment and criminal prosecution are essential. The identification and explanation of these principles, the adoption of this approach will facilitate and followed by the main function of privatization pursued and fulfilled.

2.1 Rehabilitation and Reform offenders

The consensus strategy of pursuing criminal case, see "Clinical and Therapeutic prosecutions" in which prosecutors accused thoughtful character dossiers and the ability to socialization and considering the interests of society. It trying corrects the condition and treatment of accused and also provides his return to society (Jafari & Norpour, 2015). Reforming offenders from the criminal justice system is the most fundamental goals and the criminal always returns policy makers to raise new criminal justice strategies and methods of reform - health.

In this way, the criminal policy decision-makers with a change in the nature and mission of the criminal process and seek to strengthen the sanctions regime corrective function - therapy criminal justice system have emerged (Bolek, 2005). Filing a

character in the criminal process, accepting the principle of individual responses, including mechanisms are functional changes and the clinical nature of the criminal justice system are taken into consideration (NajafiTavana, 2009).

Agreement of the prosecution, with the recognition of the will of the offender and his place in the criminal process seeks to promote the efficient functioning of the criminal justice system in the context rehabilitation of criminals. The strategy focuses on the participation of offenders in the criminal justice decision-making process. On the one hand a number of perpetrators of the criminal process to be taken quickly and on the other hand, the presence in the realm of criminal justice at least be subject to the answer that they pretty much keep harmful consequences once sanctions depriving freedom. The view out the negative effects of criminal prosecution for such labeling proposed the criminal military response against criminal behavior must be based on a policy shift. Should make every effort possible to spend specific segments of the offender in the criminal proceedings be conducted in different ways official channels.

The road they have contact with most of the formal elements of the system to round picks and in this way, reduce the likelihood of their infamous (Javan & Norpour, 2012)

2.2 Abbreviations of the criminal proceedings

Criminal justice institutions through proper investigation into criminal cases without unnecessary delay play an important role in preventing the escalation of crime and victimization and repeat. In addition, one of the important conditions for the enjoyment of the right to a fair trial, investigate the claims, sentencing and execution "as soon as possible". Hence, investigation of criminal cases not only clarify without delay the situation of the offender and the victim in reasonable time provides, but according to the usual criminal justice system, the field of health reform measures for offenders and also applying appropriate measures to protect the victims will be provided. If such actions are carried out properly and at the right time, it will play an important role in reducing the likelihood of repeated offenders and crime victims (Ahmadi, 2010). Such as the deferral of the prosecution that led to the temporary closure of the case are obvious examples are the abbreviation of criminal justice. It is obvious that such a solution in addition to accelerating the maturity, the goals of others such as corrections and crime charged is missing labels; during the deferral of prosecution as the accused controls the behavior and their actions as much as possible and try not to commit crimes. By achieving these objectives, efficiency and effectiveness of criminal justice are guaranteed. It is also one of the features brief orientations. Social reaction criminology thoughts and abbreviations regard to the application of the criminal justice system has not been immune to being productive. (Shamloo & Abdullahi, 2015) So privatization strategy of pursuing a criminal case, the most obvious solution is the quick response to crime by targeting accelerates criminal proceedings seeks to increase the efficiency of the criminal justice system in this area, which is immediately visible in the light of future criminal proceedings.

2.3 Identity of the offender

The identity of the offender is one of the fundamental principles of criminal pursuit consensus-oriented strategy. Code of Criminal Procedure and the general criminal law principle is an approach has been trying to respond to offenders. This approach was considered in the light of social norms delinquency phenomenon and hence criminals because ignoring these norms and harm to victims and the community deserve tolerance are allowed. According to this approach, the government through the criminal justice system and presumably to protect the values protected by the criminal answers. This approach has the unilateral aspect of the criminal justice system and criminal justice practitioners enables after taking offense to punish the guilty; for offenders in the criminal process and particularly dynamic role in the sentencing phase of reprisals (Najafi, 2009). The privatization approach pursued criminal case, as a new

strategy for withdrawal vertical approach to criminal justice, enter ranges in terms of criminal justice legislation has thereby become the imperative of having a break and fields of intervention and offenders in the criminal justice decision-making process will be provided. The strategy, to provide appropriate opportunities for alleged involvement in the process of determining sanctions unlike vertical approach as to his identity and has granted more active role than in the past. Thus, the defendants in at least some of the possible mechanisms of approach regarding the determination of criminal prosecution are actions. They agree that such a strategy in a number of instances of such conditions is essential selection and implementation of the strategy (Niazpour, 2011).

2.4 Reducing criminal enforcement costs and prolongation of proceedings

Save time and costs imposed on the judiciary, one of the fundamentals justifies privatization and compromise the criminal case is pursued. Official privatization strategy by diverting criminal proceedings, reduce the congestion of cases at different levels of the criminal justice system resulting in significant savings in time and costs of the judiciary. To conduct a full investigation, time, location and a large force is necessary. The complexities of the justice system sometimes causes serious problems are encountered (Mousavi, 2008). On the other hand, prolongation of procedure may lapse crime and it unpunished, leave, or whether to delay the execution of punishment enough that benefit destroy it, if treatise on crime and punishment, notes, "The rapid punishment and immediately run chase crime would be fairer and more useful. Would be more fair to blame because of the terrible punishments in vain doubt and imagination and a sense of his own weakness and uncertainty that intensified it, will be removed. Would be fairer because their criminal deprivation of liberty if necessary not appropriate, not right before sentence is imposed (Beccaria, translation: Mohammad Ali Ardabili, 2015). But the punishment after a long time, Asexual is a juvenile. The society also obliterated the memory of such punishment, benefit from no criminal purposes "As soon as the eruption occurs, spicy forget" (Norbaha, 2007). Thus, given that the privatization strategy criminal proceedings outside of the mainstream and responding to crime with the participation of the victim, criminal and judicial authorities will do, while reducing costs to the criminal justice system are dealt with quickly and without prolongation of the proceedings.

B) Iran's criminal policy approach in field of criminal case deferred prosecution

Deferred prosecution agreement is the criminal case prosecution and one of the most important effects and then prosecutor whereby and after obtaining special conditions may prosecute criminal case to be suspended for a certain time. The method for this prosecution is the latest example of an agreement and selection and its implementation depends on obtaining a series of conditions, including agreement between official and the victim's and victim's consent. There was not implemented as agreed between the three actors to lead the way.

1. Deferred prosecution

Deferred prosecution including methods by which the prosecuting criminal case is delayed for a while. The legislator has not provided a definition of the institution. According to relevant laws in defining the institution can be said: Deferred prosecution agreement with the judicial institution whereby the accused and the victim or private claims, to compensate for damages to the injured party, criminal prosecution's case for a certain time delay. As mentioned in the definition of the institution of the institution to defer prosecution of the victim, criminal and judicial officials privately and outside the formal process of acting on hold to chase them (Khaleghi, 2014).

2. History of the deferred prosecution

The deferral of prosecution in the criminal justice system of our country was not identified as explicit. But actually puts our country in the penal system of some petty crimes that aspect of their private and their general aspect is more important than came into force and a number of judges by giving notice to the accused to satisfy the complainant or the victim in the criminal case prosecution to delay action. Tehran Penal Court Branch 230, for example, in the case Classifieds 81/1635/230 charged with breach of trust with the request to postpone the pursuit of criminal case the complainant has agreed to take over. Following this decision have committed to draw the complainant's consent. According to the court verdict passed on the fate of No. 984 due to the effect of such crimes decided (Niazpour, 2011) so although unofficially criminal courts of this institution used but this method has postponed the adoption of the Code of Criminal Procedure adopted in 2013 had not been incorporated into our penal system. There is an opportunity as a chance to prove goodwill that was somewhat similar to the deferral of prosecution. According to Article 6 of the law "In all the cases mentioned in the above case exporter check suspend the prosecution prove its goodwill.

3. Terms of issuance of the deferred prosecution

According to Article 82 of the Code of Criminal Procedure for the issue of postponement of prosecution there are some essential conditions and some of these conditions are related to crime and other related parties which are described below to check it.

3.1 Sentenced for crime

According to Article 82 of postponement of the issuance of mandatory criminal prosecution only in grade six, seven and eight are possible. So postponed prosecution in offenses with punishment, too, retribution (life and limb) and Diego as well as crime is not possible prison sentence of one to five. The territory is limited deferral of prosecution as below. First, it shows the beginning of Article 82 issue of postponement is not possible and judicial authorities are obliged to prosecute offenders. (Haji Tabar Firouzjaee, 2016)

Second only crime was sentenced grade six, seven and eight of postponement of prosecution. Sentenced for crimes committed crimes which require punishment and the sentence handed accordance with article 18 of the Penal Code which is punishable by as much subject to retaliation, law in cases of unlawful acts or violation of government regulations determine and apply. Penal Code and sentenced to eight degrees is divided among the eight grade, deferred prosecution only on the sentence handed grade six, seven and eight are possible.

3.2 Suspended of crime

In addition to crimes that must be punished crime, the legislator has written in this regard is another condition and it is that crime is suspended. In other words, crime is one of the crimes sentenced the possible imposition of a penalty of suspension of execution for it. The legislator of bringing indicating "suspended the crime" that some crimes sentence in Article 47 of the Penal Code has been entered withdraw from the territory of postponement of prosecution not that there are all conditions for the issue of postponement of prosecution suspension is necessary (Aghae Janet Makan, 2014). So the issue of postponement in prison for crimes even if they grade six to eight is possible:

A) Crime against internal and external security of the country, sabotage of water, electricity, gas, oil and telecommunications;

B) Organized crime, armed robbery or robbery to assault, kidnapping and acid;

C) Power and interfere with a knife or any other weapon, crimes against public morals, or the formation of centers of corruption and prostitution;

D) Trafficking of narcotics or psychotropic substances, alcohol and weapons and human trafficking;

E) Punishment instead of death, intentional murder and waging war against God and corruption on earth;

C) Economic crimes, the crime issue more than one hundred million (1000000000) riyals.

However, Article 82 issue of postponement of prosecution for all crimes was sentenced absolute degree is six to eight are possible but in addition to crimes that have been exceptions in Article 47 of the Penal Code Clause 2, Article 115 of the Act for the issuance of postponement should also bear in mind. According to the judicial authority cannot comment on authoritative legal sanctions of suspension issue. So the issue of postponement of prosecution of crimes with a degree of discretionary non-authoritative six to eight degree is possible.

3.3 Agreement judicial authority and the parties

One important feature of the deferred prosecution agreement is this institution. According to Article 82 of the Code of Criminal Procedure on deferred prosecution deal is subject to the will. It was therefore agreed to issue a "judicial authority". "The defendant" and "victim" condition and if one of these three actors is opposed by issuing criminal case will not be such an issue. This tripartite agreement shows that the issuance of a task is not for the prosecution and the prosecution may result even if consensual, the issuance of the refusal and the parties also has the right to challenge his decision. On the other hand if the judicial authority and the victim or his deputy are willing to issue such villages but the victim does not want to do is to file a criminal complaint they cannot do any of the victims were forced to accept the offer (Niazpour, 2011). In general issue of postponement of prosecution of the accused is subject to question and as long as he did not make such a judicial authority does not have the right to issue such an appointment. Criminal case has been postpones restorative nature and the grounds for compensation and the needs of the victim. It seems that when the case will issue in addition to being sentenced for crimes that crimes should be suspended from grade six, seven and eight are eligible for crimes and it is there that the victim or private claims otherwise there will be no possibility of issuing. In other words, if the crime of victimless crimes of postponement is not subject chase because in this type of crime (such as the veil, driving without a license, etc.), the victim has suffered direct damage. The purpose of the crimes is victimless crimes, which caused no damage caused to individuals cannot be fixed (Rahami, 2010)

3.4 Obtaining appropriate supply

If all conditions are met the injured official to serve the interests of the mass is required before the issue of postponement of providing appropriate prosecution of the accused under Article 217 of the Criminal Procedure Code obtain. Providing tailored to suit the type and importance of the offense, the severity of the punishment, the accused is likely to flee or hide, accused history, mental and physical condition and determined (Javanmard, 2014) however, cast financing should be such that it does not accused of supplying ability and thus be arrested because providing such supply will be borrowed by the judiciary violations.

4 Term of deferred prosecution and its consequences

If all conditions had delayed issuing a judicial authority must consider the circumstances of the parties to the case appropriate time to determine compensation or satisfaction of the complainant. Deadline should be fit on the one hand have the accused at the time the compensation and on the other hand

accused of abuse and further losses are not the victim. According to Article 82 of the Criminal Procedure Code following the issue of postponement of prosecution by judicial authorities on the accused the maximum two month deadline is the complainant went to school or compensation of crime act (Khaleghi, 2016) If the deadline fails to compensate damages or satisfaction to draw victim where appropriate, judicial authorities only once, can apply for the extension. Judicial authorities according to the circumstances of the case could be extended to two months of postponement of the chase. To renew two of postponement should be noted. First, as the primary issue, the judicial authorities have no obligation to extend and second, although the deadline for victim satisfaction or dissatisfaction of the legislation is silent but judicial authorities shall also draw the victim's consent to an extension. In other words, as may have been issued without the consent of the victim is absent; there is also the possibility of extension. The question that arises here is: that if the defendant during the victim not delay any action for compensation are the deadline postponed orders can be canceled?

In response to this question can be said on the basis of the compensation of crime and when nothing is done by the defendant in this case can be terminated orders. On the other hand it can be argued that the delay with the agreement of the parties and judicial officials and legislators to not allow any of them terminate issued without the consent of the other. Upon completion of the above-mentioned deadlines if the plaintiff's consent or damages to compensate the victim draw and the criminalization of offenses passed (in accordance with Clause 1 of Article 100 of the Penal Code offenses are crimes that started after the arguments of prosecution and trial and the penalty is subject to the plaintiffs and the lack passed him (Asrafilian, 2002) is a judicial authority in accordance with paragraph B of Article 13 of the Criminal Procedure Act to issue the cessation of prosecution and ordered the release of the accused as well as providing derived from exports. If unforgiving crime of crimes (in accordance with Clause 2, Article 100 of the Penal Code unforgiving crimes are crimes and the plaintiffs and passed him at the start of prosecution and trial and continue to implement punishment has no effect) in this case, if the plaintiff shall be passed or be compensated for his loss or agreed to be paid on and criminal convictions is accused of lacking judicial authority may, after obtaining the consent of the accused, according to article 82 of the Code of Criminal Procedure suspend his pursuit of six months to two years. But if they fail to implement deferred prosecution case will run its normal course.

5 Criminological assessment of the deferred prosecution

Deferred prosecution is the prosecution theory of restorative justice and the principle of proportionality and the imitation of Legislative France's penal system of our country. Prior to the adoption of this institution, the length of the criminal process allowed offenders before completing the process, the consent of the victim draw and thus benefit from legal discounts, but with the arrival of the penal system took it official that its effective implementation is undoubtedly a benefit for litigants and society. On the one hand losses into private claims paid him less time will be needed to achieve their rights during all stages of the criminal process (Sabouhi, 2015). On the other hand gives the defendant the opportunity to satisfy the victim and taking over the case, he shall cease or suspend prosecution or punishment use. The criminal justice system also can be closed off such cases the initial stage of creating additional costs and the accumulation of criminal cases avoid the time and have more power to handle high-profile cases. However, adoption of this institution is very blessed and admirable but how to accept criticism has noticed legislator. The first criticism that can be raised about the delay in prosecution related to the scope and range of the institution. Territorial Legislature limited the issuance of the crime were sentenced to six degrees, it has seven and eight, such an issue should be mandatory on most crimes, including offenses passed and unforgiving predicted. The vast

territory in accordance with the principles of restorative justice has been delayed prosecution and the rights of the injured party of the crime and the rights of society does not contradict any because one of the conditions for issuing the consent of the victim and judicial authorities as the representative of society and prosecution whenever he felt the issuance of this will be to the benefit of society refused to issue it. Legislator on the one hand prosecutes certain crimes (such as a crime under the penal code 699) regarding this crime is considered possible. This kind of blatant contradiction with the principles and objectives of the institution's limitations and cannot have any justification (Niazpour, 2011).

The issuance of crimes punishable by the legislature in retaliation and Diego did not anticipate; while the forgivable given the right human and many of these crimes about which there is the possibility of postponement of issuance. Including some that can be issued in respect of such and is based on article 255 of the Penal Code was enacted in 2013 and when will the expanded complained, enforceable and run it on demand. Thus, according to the law is pure and the issuance of no objection in this regard but in other cases such as adultery, sodomy, drinking alcohol and was basically right of Allah and do not have private complainant and often private prosecution is not in the issuing of such an problem. The crimes punishable by death and a member and past crimes punishable by Diego as well as the plaintiff's complaint in this regard have great importance. The legislator should not be limited to crimes sentence was delayed issuance of the territory; it would be possible to postpone the issue to be sued in all crimes that affected the effective mass and respects the rights of people it is a huge aspect of god predict according to which the entity is useful for victim and society better and optimal use of it.

6. Conclusion

Today, for various reasons the prosecution of offenders in the criminal procedure legal, criminological, management are pure asymmetric approach taken by the various changes to the Criminal flexible approach has been adopted. These developments have caused judicial and criminal policy of criminal prosecution for providing the core objectives of the Code of Criminal Procedure benefit of new strategies. Restorative Strategies compromise a deferred prosecution that is the most striking aspect of the Code of Criminal Procedure in prosecution horizontal is further. The privatization strategy or compromise the identity of the criminal prosecution of criminal case and offenders and victims together in order to determine the step response. Therefore, the agreement between official and offenders is the essence of this strategy and the same old nature / Traditional Criminal Procedure Code changed and it is grounds for pursuing or stops it in the pre-hearing and change the type and manner of response in criminal prosecution as well.

Privatization strategy and the agreement of the prosecution, as one of the strategies criminal regressive, traditional criminal justice where the basis for unilateral expression of the will of the judicial authority and respect for the expressions of it was provided by the offender, accredited with the will of the accused / offender has suffered a break. Namely, criminal justice strategy in the light of the just seek to impose unilateral punitive policy is not predetermined, but expedient approach to the critical and comprehensive assessment of all aspects related to the crime, the various stages of criminal proceedings, state actors criminal case and how to respond to the reality of crime and most appropriate way of your choice. In this way, the privatization of criminal prosecution strategy that the criminal process and against the will of the tripartite actors (ie the judicial authority, victim and offender) type and the nature of the criminal justice response to crime as a matter of criminal law has been introduced. The strategy for changing how we respond to crime, lead to changes in the nature / essence of criminal law provided as a result, the criminal justice system into a platform for dialogue and community representative, this time the (judicial) and criminal conversion is made. As criminal's

satisfaction to impose some answers as one of the most important criteria was introduced. Criminal case prosecution delayed the outcome of this new and significant shift in the territory of the Code of Criminal Procedure prosecution in criminal proceedings whereby the prosecution accused the terms of the agreement, especially between him and the victim of the judicial authority for a certain period stops. This method as an example of the strategy of suspending the prosecution of criminal case or it is subject to the Code of Criminal Procedure.

This means that those involved in the criminal justice this time instead focus on prosecuting the accused as soon as due to the fact that the public interest requires the prosecution of the accused is only in accordance with the teachings of the above-mentioned strategy to measure public interest and the consequences of its withdrawal shall deny prosecute the accused or the prosecution continued to be disproportionate to suspend. However, the deferred prosecution agreement, the criminal case prosecution strategy is one of the methods in the field of criminal policy of Iran, lacks the legislative history and the first Iranian legislator affected by the results of clinical criminology especially in the Code of Criminal Procedure Act of 2013 MFI has predicted, in the meantime, education, criminal justice practitioners optimal use of this method and culture among the public about the benefits mentioned methods play a significant role in the granting of the status of teaching and the effects of criminal prosecution, including deferred prosecution agreement, whether play role in the realm of legislation and what happens in the realm.

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