



PUBLIC SERVICES, AN ALTERNATIVE SANCTION FOR CHILDREN AND ADOLESCENTS IN CONFLICT WITH LAW

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ABSTRACT

Nowadays, using social punishment for the actions in conflict with law committed by children and adolescents - which are mainly due to poverty, parents' divorce, lack of proper rearing and so on and proven ineffective criminal penalties given the results of their application - is absolutely certain and necessary. The studies on the use of alternative measures have shown the fruition and effectiveness of these measures in deterring recurrence of crime, saving child and adolescent care costs in closed environments and preventing the negative effects of these environments. However, it has to be stated that the mere use of social services as a substitute for criminal penalties, disregarding the existence of the required contexts in community, has not only reduced its effectiveness, but also can end in adverse consequences.

Keywords: Public Services, Measures Alternative to Punishment, Children and Adolescents in Conflict with Law, Rehabilitation, Social Responses, Recurrence of Crime.

INTRODUCTION

With no doubt, the future of any country depends on the proper rearing of children and adolescents, as the future of the country. When these people do something, considered to be crime according to the society, the society considers some sanction for these actions accordingly. Using rehabilitative and corrective punishments on them along creating a safe contest for the return of these people to the community has been the main concern of most intellectuals in different communities. Most societies try to show more tenderness towards the actions committed by the children and adolescents. The importance of using corrective, educational, and restorative responses regarding children and adolescents is something absolutely necessary. However, it should be noted that the use of social penalties asks for their careful inspection, using the experiences of different countries in this regard and the localization of these measures considering the culture and customs governing the community.

History

Working for the society is one of the oldest sanctions dating back to the Roman Empire. In some African countries, working for the community has been as sanctions against crime (Ashouri, 2003). Bekaria has considered using public services (social services) as the best sanction against theft, which makes the offender, serve the community with temporary slavery (Bekaria, 2010). In 1950, a juvenile judge in Bern (the capital of Switzerland) as well as a juvenile judge in

Brussels (Belgium), regardless of the punishment methods set in the child-specific rules, issued sentences granting public services to the public (Danesh, 1999). In America, Alameda, Californian judges created this penalty in the 1960s to avoid imposing a cash fine for driving offenses of low-income women who could not pay that fine. In England and Wales, this solution of Criminal Justice was institutionalized in 1972. Initially, it was for delinquents of 17 years and more, and in 1983 it was extended to delinquent children. The first public service in Germany took place in 1953 in the Federal Republic of Germany (Torrenie, *Alternative Detention Punishments in Europe*, p. 23).

Definition

This sanction not only does not entail the disadvantages and hazards of the prison, but also leads to economic, social and cultural growth and is very effective in rehabilitating and reforming the offender. In fact, with this sanction, the individual partially compensates for the negative effects that he has imposed on society. However, this does not mean that a person is forced into forced labor, but it is a measure to make him modify his behavior. In the definition of this sanction, one can state that it is the service performed by the convict against the unpaid convict in favor of the community. The court issues the order of public services given the type of crime, age, gender, physical and mental abilities, occupation and skill.

In another definition, public service is defined as a program through which the convicts are sent to non-profits or tax-exempt entities to provide certain hours of service or work for a limited period of time as a punishment without pay.

Working in public services is a kind of non-paid criminal conviction, so that children and adolescents in conflict with the law will figure out the consequences of violating the law and be punished thus, although sometimes a sum is to the convict as a reward for doing good work - to do the tasks entrusted more carefully and feel confident.

Goals

Public services were generally proposed to replace the prison, but later on they were used as a means to replace any kind of punishment. The method mentioned is intended to strengthen the volition of children to get accustomed to future jobs and take responsibility, and to maintain respect for others and build community responsibilities. The following are among the objectives of this sanction:

- A. Compensating the damage to the society and in some way repairing the negative effects created in society, by working unpaid or at low pays can be cited. By acting in conflict with the law on the side of the children and adolescents, the society is; however, unlike aggressive sanctions considering the child as a malicious element, using these measures the child is used as a useful element in making compensation for the damage created.
- B. Through this sanction, the offender's socialization and rehabilitation can be achieved through the responsibility given to him.
- C. Reducing the frequency of crime through keeping the person in community and creating a sense of responsibility in him
- D. Avoiding costs of keeping people in the closed environment and its risks
- E. benefiting of the society by doing things beneficial to the community and preventing the costs required for those tasks, if done by other workers



Hence, it can be stated that the purpose of public services is providing a valuable or beneficial social strategy that can restore, correct and reduce the future recurrence of crime (Ashouri, 2003).

However, for this sanction to be able to achieve positive results, some conditions are needed. Additionally, kind of sanction cannot be considered for each child and adolescence - in some cases, the level of individual risk for the community is so high that this sanction seems to be inadequate that is not be capable of reforming the individual. Moreover, the issuance of such sanctions the society needs specialized judges that use this sanction considering the moods of the child and adolescent, the type of crime committed, the risk of the crime, family status and using expert psychologists and social workers in perceiving the sanction as useful. For example, cleaning up in a neighborhood is considered as a social service, but if a person lives in an environment that doing it is laughed at by friends and so on, it will not only be unhelpful, but have serious negative effects.

Furthermore, the issuance and implementation of such measures needs the preparation of society and public opinion to accept such a performance sanction instead of punishment and to understand its benefits. Overall, we can say that to use such sanctions, we need the following conditions.

The contexts needed for the proper implementation of public services

- A. Participation of Judicial Agencies: for better implementation of this project, we need to use specialized judges in this field and the development and promotion of existing judges through training and promotion
In some countries, like Zimbabwe, the Supreme Court and Supreme Courts support and collaborate with the judiciary in providing support for the plan by providing guidance and collaboration (Ashouri, 2003).
- B. Participation of the people and the local community
Through the local community, activities, and people's participation, one can take actions to reform and rehabilitate criminals
- C. Collaboration between media and non-governmental organizations (NGOs):
For better implementation of this sanction, we need to make culture through mass media and insinuate the benefits of this type of performance sanction rather than setting more rigorous sanctions. Additionally, to implement this plan in the community, we need NGOs to monitor and implement such projects in the community.

Issuing conditions and the scope of public services

Public services are considered only for non-heavy crimes, where the risk by the person to the community is not high. However, the issuing judge should consider that keeping in the closed environment is the last sanction for children and adolescents. Moreover, the age of the child or teenager is such that it would be beneficial for him to perform such a performance sanction and would result in his socialization and education. For example, in England and Wales, the court may order public service for all persons of sixteen years and older to the point where the cause of the offense is punishable by the imprisonment penalty.

Furthermore, in the case of the issuance of such a performance sanction, the child's or adolescent's mandatory hours for such actions must be fully specified. For instance, in French law, in accordance with Article 43.4.3 of the Criminal Code of June 10, 1983, the duration of



public service work for children between the ages of 16 and 18 is from 2 up to 120 hours, which is half of this sanction for adults (Talebi, 2005).

There should also be an age requirement for issuing such a sanction: the obligation to perform the service is usually performed for teenagers over 15 who need professional technical training (Danesh, 1999). The workplace should also be at the place of permanent residence of the child and adolescent, as one of the main objectives of such a sanction is to ensure that the person is not distanced from the family, so this should be met.

Moreover, the type of work is determined by the needs of the community, the risk posed by the child or the adolescent, and the extent and type of his ability: for example, helping the elderly or cleaning the mosque or the like.

As mentioned, although public services should usually be free of charge, for the person to understand the risk he posed to the society, sometimes rewards can be considered to encourage the person and create a sense of self-confidence.

However, the reward should not exceed one tenth of the wages of workers employed in the same field (Danesh, 1999).

Moreover, in issuing such verdicts, the child or adolescent's opinion should be asked and such verdicts be issued with such consent. For example, if the person is interested in sports activities, serving in a sports institution can be considered or for someone interested in the book, the activity in a public library can be considered. As the requirement to do public services is a substitute for punishment, the issuing authority of such orders should be able to replace the previous performance sanction if necessary.

Public services in the legal system of some countries of the world

In Europe, these services exist in most countries, including Denmark, France, Ireland, Portugal, the UK, Scotland and Northern Ireland. In Austria, this service exists, but is only used for children (Torrenie, Alternative Remuneration in Europe, p. 21). Although doing public services from a theoretical point of view should not be used as a sanction for short-term imprisonment up to six months, it is common practice in different countries, where it is used to replace short-term imprisonment. In accordance with Article 5-20 of the 16 September 1992 Act of France, whenever a child ages 16 to 18 years sentenced to a crime of imprisonment, the Tribunal for Children and Criminal Tribunals of the Child may issue a public service order (Danesh, 1999). In accordance with Article 131-8 of the Act of 1 March 1994, France has the right to refuse the verdict for the child in this regard, and the verdict must be made in his presence, and the term of the conviction is to serve public services at least 20 and maximum 120 hours for the child to complete within 18 months, and if the sentence is completed before that period, it is terminated. Moreover, under Article 131-24 of this Act, if the damage is caused to another person during the execution of the sentence, the state is the guarantor of the compensation and damage (Talebi, 2005).

In Switzerland, a public service sanction is provided for children between the ages of 7 and 18, and for children under this age, educational work and artistic and technical work are verdediced. Kind of work for children aged 7 to 15 and adolescents aged 15 to 17 is determined depending on age, physical activity, the need for the job, and family status (Talebi, 2005) - CARITAS Charity Association (CARITAS), established in 1955 for recruitment of convicts responsible for supervision of the implementation of employment for public utility services. In Finland, public



services were issued experimentally in 1991, and since April 1, 1994, this system has been implemented by the entire country (Talebi, 2005).

In South Ireland, public public services statistics, available since 1984, increased to 1,731 by 1990, with a clear trend seen during this period to increase the public service hours from 83 hours in 1985 to 142 hours in 1990. In Brazil, alternative sanctions have been widely used since 1998, and public service in Brazil is one of the alternative methods of imprisonment. In Holland, only imprisonments over six months can be replaced with public service, although a very small portion of the sentences for imprisonment is more than six months. Moreover, for the term of imprisonment up to six months, the total working hours of the public service should not exceed 100 hours (Talebi, 2005).

In England, since 1991, the possibility of issuing sentences for public works has been foreseen in place of fines or in combination with them. Under the Criminal Justice Act of 1991, the elimination of restrictions on the issuance of sentences for public affairs rather than imprisonment and courts can only recognize general sanction wherever appropriate, or combine it with other appointments, such as fines or compensation, or a care suspension. In this country, public services were initially sanctioned in 1969 for children and juvenile offenders, and sentenced them to a maximum of 100 hours of unpaid work for a period of three months. Determining the place and type of work is done according of the children and young people's personality and negotiating (Danesh, 1994). In England, a public service verdict involves compensation of the community (such as cleaning parks) and requests for regular activities; thus, it can be considered as a real alternative to imprisonment (Ashouri, 2003). The typical time framework of public service time is from 40 to 240 hours.

However, in some countries, such as Uganda, there is a new time frame from 35 to 420 hours, although in exceptional cases time less than this can also be estimated, but in no case, public services should be less than seven hours. In Italian law, the Children's Court can issue a job order for children aged 16 to 18 years old and send a copy of the verdict to the judge for the execution of a permanent residence permit. The judge, considering the physical and psychological state of the social position and local facilities provide the kind of work and conditions that the convicted child has is required to comply with: determining, caring and guiding him to the social workers of the Department of Pediatrics of the Judiciary (Danesh, 1999).

Studies in Africa have begun on alternative submissions in Zimbabwe since 1992. Zimbabwe established a public service plan with the support of the EU and the British Government through the International Criminal Reconstruction Reform Agency (Ashouri, 2003). After the success of Zimbabwe in 1999, it sent a board to establish such an institution to some African countries, including Malawi, Kenya, Uganda and Zimbabwe with the help of the International Criminal Reconstruction Reform Agency (ICCR) (Ashouri, 2003). In Malawi, by passing a law, public service was recognized as a formal punishment by the courts, and then a pilot project with funding was launched at the British Foreign Office. In 1999, with the help of the Attorney General of Kenya, this law formally entered the country, following which a new National Public Service Commission (NPSC) was formed. In Zimbabwe and Uganda in 1999, the members of NPSC stressed the renewal and revival of the plans and provided some plans to approve the necessary legal provisions and establish administrative and executive arrangements in this regard (Ashouri, 2003).

Various forms of public services



Different countries have various forms of public services, of which the following can be cited:

- A. Utility service as the main punishment
- B. Public service as an alternative for prison or a cash fine
- C. Probation along public services
- D. Public services as a complementary punishment

A) Public services as the main punishment:

According to Article 131-3 of French Penal Code on punitive offenses, one of the cases for which the court can independently verdict as sanction is public service; this sanction in America is sentenced for minor offenses like driving (Talebi, 2005).

B) Public service as a substitute for a prison or a cash fine

In England, public service was first introduced to the law of this country as a substitute for jail in case of children and young people. In America, public service is judged by the discretion of the judge and is usually prosecuted instead of imprisonment or cash fines (if the person sentenced to cash cannot afford it); in France, pursuant to Article 131-8 of the Criminal Code, in cases of criminal offenses, the judge can use public services as a substitute for a prison term of 40 to 240 hours. However, prior to issuing a verdict, the defendant should ask the court whether or not to issue such a decree and obtain his consent.

Moreover, under Article 293 of the French Penal Code 1992, a convicted person who may be subject to imprisonment due to non-payment of a fine may request a public service.

C) Probation accompanied by public services

Public service in most states of America is one of the conditions for probation to prisoners. In England, public services along probation are one of the complex provisions that a judge can issue. According to Article 119 of the French Penal Code, in criminal and penal convictions that do not exceed 5 years, the court can use probation and conditional suspensions, and one of the conditions that can be imposed on the convicted person is the provision of public services from 40 to 240 hours (Ashouri, 2003).

D) Public services as a supplementary sanction

In some cases, public services are used as a supplementary sanction.

According to paragraph 2 of Article 131-17 of the French Penal Code, this states that “the provisions concerning the commission of offenses of the fifth category that may be imposed may also cover the additional punishment of public service from 20 to 120 hours.” (Ashouri, 2003) Regarding the issuance of each case, the judge must consider the child and adolescent's mental and social status and his ability to perform public services to take appropriate sanction in this regard. Social worker and psychologists specializing in children and adolescents field can be turned to in doing so.

Appraisal of the program of public services

Nowadays, in most countries, public services are used as one of the best sanctions. In a variety of perspectives on this measure, a children's judge in France says: “Public services are now a famous policy for children, and are far more acceptable than probations. After the execution of the penalty, the case is closed definitively, and as a result, the feeling of being an offender is reduced (Lorens, public services, punishment, society, p. 89).



Joldem (1986) writes on public services in the occasion of the Criminology Day “the concern for diversity is rooted in an overwhelming concern. Another criminal provision for the replacement of short-term imprisonment, since the prison became more heavily constructed, which will soon be able to capture the flood of criminals suddenly. These reforms try to treat criminals differently, and rely on the hypothesis that convicts will be imprisoned and their economic costs and the decline in the role of jail as a deterrent to crime (Lorens, public services, punishment, society, p. 95). In France, from 1984 to 1988, the issuance of a sentence to public services in case of theft crimes was consistently 66% and in driving offenses 12% (Lorens, public services, punishment, society, p. 95).

The American public-service oriented project was launched by Vera Institute of Justice, which was originally launched in 1979 in New York. The program was designed as a valid punishment for repeater of offenses of financial crimes that were previously sentenced to short-term probation or short-term imprisonment, and those who faced short-term or longer imprisonment for a term of imprisonment of up to six months, criminals seventy hours of public services under the supervision of the Vera Institute. Participants are stated that they are heavily monitored, and those who do not attend will be punished. An advanced evaluation showed that the rate of repetition of crime was unchanged as a result of this program, the objectives of detention were met and the program saved the taxpayer's money (Toneri, 2008).

Among the benefits of public services evaluated, the following can be cited:

- A. Not having the dangers and deficiencies of the prison
For example, the experience of Zimbabwe shows the success of the program with more than 16,000 people convicted of conducting public services in 1997 (Ashouri, 2003).
- B. Reducing the costs of prison construction and the maintenance of prisoners
One of the issues that greatly affects the budgets of the various countries and takes a great part of the budget of each country is prison, with the implementation of this sanction, not only will it be prevented from imposing huge prison charges, but also some savings are made in budgeting by doing these services for free that profits the community.
- C. Promoting economic, social and cultural progress:
Using children and adolescents in this regard is using both their workforce and their intellectual ability, which helps to advance the community.
Modification and correction of the criminal: by not using the prisons, women are prevented from its depression and, instead of creating a sense of revenge on the child and adolescent, it strengthens his physical and mental capacity along his sense of responsibility.
- D. Having higher feasibility than other alternatives:
Public services are more suitable than other alternatives because of the feasibility of their implementation. For example, in case of lack financial affordability, financial punishments cannot be enforced. Overall, it has been proven that public services are as efficient and cost effective as possible. Criminals can be beneficial and effective, especially since it has had beneficial effects in some countries, such as Zimbabwe (Ashouri, 2003). In France, the share of public services in general convictions has increased regularly from 0.7 in 1984 to 1.6 percent in 1985 reaching 3% in 1992. In 1992, a sum of 13267 public services were issued, of which 5911 were related to the



main punishment (45%) and 7356 cases of sentences were related to suspension (Cansi, General Service, p. 109).

In studies conducted over a decade of public service experience in France, 97 questionnaires distributed in different jurisdictions reflecting the practical practice of 40 courts, i.e. 9.22% of the total courts, as follows: In none of the 97 questionnaires, there is evidence of criticism from the base of this punishment. The more surprising thing is that, given the weakness of human facilities in its implementation, the majority of jurisdictions are pleased with the application of this penalty, which is 61% of the votes, although it is subjective, it suggests a way of thinking (Cansi, General Service, p. 138-139). Based on some available statistics, 60% of the decisions made in France have been used as an alternative sanction for public services, suggesting that among the alternative sanction, using public services is of particular importance (Ashouri, 2007).

For achieving more positive results, according to the studies done in this field, one can state that this punishment should be for those who have social deployment and introspection capabilities and values such as (fixation and compensation), have a transitional value and reduce their mental unrest and lead them to reorganize and invest in the future. However, there are no precise statistics that can be used to accurately assess the effects of this sanction but in general; its effects can be evaluated positively.

Public service in Iran's criminal policy

Article 84 of the Islamic Penal Code has dealt with public services. According to this article: Free public services are services that are judged by the consent of the convicted person for a specified period as follows and are enforceable under the supervision of the judge:

- A. Against the offenses referred to in paragraph (a) of Article (83) (offenses punishable by a maximum of three months' imprisonment) up to 270 hours
- B. The offenses referred to in article (83) (b) (crimes whose legal punishment is ninety-one to six months' imprisonment, and offenses whose type and amount are not specified in the law) two hundred seventy to five hundred and fifty forty hours
- C. Offenses referred to in paragraph (c) of article (83) (offenses punishable more than six months to one year) five hundred and forty thousand to eighty hours
- D. Offenses referred to in paragraph (a) article (83) (i) (unintentional offenses whose legal penalty is more than one year) thirty thousand to two hundred and sixty hours

Note 1 of this article is distinguishes between employed and non-employed persons. The service will not be more than eight hours a day for employed and more than four hours and for unemployed people.

According to Note 2 of this article refers to the court orders of the provision of a public service conditional on observance of all the rules and regulations applicable to that service, such as the conditions for the work of women and adolescents, technical and health protection, and the specific rules of difficult and harmful work. Concerning the use of this alternative punishment for children and adolescents, it should be stated that according to Article 79 of the Labor Law, adopted on October 31, 1990, employing persons under 15 is prohibited and according to Article 89 of the Islamic Penal Code, this sanction is enforced only in specifically, adolescents from fifteen to eighteen years of age, and subject to paragraph (c) of this article, provide for the service of one hundred and eighty-seven hundred and twenty hours of free public services in respect of offenses punishable by law from five to sixty and one hundred and eight hours of free



public service for crimes punishable by law enforcement grade six. Moreover, according to the Note 1 of Article 89 of the Islamic Penal Code, public service hours are not more than four hours a day.

Note 3 of articles 84 of the Islamic Penal Code states that the court cannot order more than one public service considered in the regulations of this chapter. Anyway, if the convict does not satisfy the public service, the basic punishment will be ruled out.

According to Note 4 of this article, the judge can suspend public services sentence temporarily and for up to three months during a period or make it punishable by another alternative and suggest it to the issuing court, considering physical condition and need for medical services or family problems and the like.

CONCLUSION

Meeting the main needs of the society in general, especially employment creation, housing and living facilities, education, eliminating the economic downturn, improving the quality of education and preventing the migration of people to large cities for employment are among the non-criminal general preventive tools. By eliminating these problems, the perpetration of the crime by these people, especially children and adolescents can be prevented. Without the realization of all this, the use of punitive and alternative measures will not be effective. In other words, we must first create the necessary grounds and areas to use the remedy, so that alternative methods are not used just as temporary solutions. Studies conducted in the area of behavior by children and adolescents in conflict with the law and the causes of these acts show that unhealthy social environment, poverty, addiction, parents' divorce, illiteracy, and so on have a significant effect on the perpetration of actions in conflict with the law by the children and adolescents and having healthy parents can greatly reduce the perpetration of these acts.

The available statistics on the terrible state of the country's correctional centers and the professionalization of children and adolescents in these centers show the inefficiency of these centers in reforming and rehabilitating children and adolescents and creating an environment for their return to the community (Akbarikia and Gholami, 2007; Goudarzi, 2003; Malih, 2005; McCain et al., 2002). Moreover, applying capital punishment, due to its very negative results, has made legal systems in most countries in the world remove this punishment for their adults, which is necessary to eliminate this punishment for children and young people (Rayejian Asli, 2004). Regarding flogging, due to its being humiliating and creating pain in the body, have proven to be inefficient, especially for changing children and adolescents (Kianpour, 1959).

Applying social punishment for children and adolescents, as was seen, can largely lead to the reforms in children and adolescents, letting them return to society without humiliating them. The results suggest that the application of this alternative policy not only reduces the negative effects of imprisonment, flogging, and capital punishment, but saves the huge costs of imprisonment.

However, the usefulness and effectiveness of this measure in a legal system does not necessarily guarantee its success in other systems, but the success or failure of such measures requires the establishment of this field and the creation of space, facilities and training necessary to different people and creating expertise.

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