DUAL PUNISHMENT

Police probation punishment in Egypt, enforcing it on political opposition and associated violations.
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An analytical paper by the research unit in the organisation Egyptian Front for Human Rights.

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Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

Article 1.0 from United Nations Standard Minimum Rules for Non-custodial Measures

- The Tokyo Rules ¹

¹ Adopted by General Assembly resolution 45/110 of 14 December 1990 http://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx
Dual Punishment
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Introduction
By a law that dates back to the era of King Farouk I, Egyptian political opponents and activists await, after their release from prison, a new pattern of violations that aims at restricting their freedoms, limiting their movement, and their political activism. This is done through imposing police probation measures in accordance with law number 99 of 1945.

For a long time, police probation has increasingly been applied on regular criminals to later include political activists arrested and sentenced to prison in protesting, mobbing, and bullying cases. Those who were sentenced to police probation have to spend a period that doesn’t exceed five years after completing their prison term; a punishment that has been enforced on a number of opponents with different political affiliations.

According to this penalty, individuals under police probation must spend the assigned probation hours from 6 pm until 6 am the following day at the police station which deprives the probationer of almost all his day.

In addition to detaining the probationer all night, the excessive arbitrary measures associated with the penalty execution restricts the movement of monitored during the day. The repetitive decline of late permits, waivers, or monitored while at home requests debilitates the probationer from fulfilling his obligations towards his family and violates his right to work. It also eliminates all the probationer’s possibilities to travel inside or outside the country and diminishes opportunities of education and self-development.

This negatively affects the reintegration of the person under probation into the community and is regarded as an unfair application of a penalty which conditions don’t match current modern societal changes.

Generally, the police probation has two main objectives; first is to prevent the person from engaging in any criminal act and second is to help him adopt the behavior of a normal citizen; a vision that is
counteracted upon by the punitive policies in Egypt. Authorizing the Ministry of Interior (MOI) to execute the penalty results in arbitrary measures that violates the personal rights of the monitored, and thus it negatively affects their involvement in the society.

The aim of this paper is to examine the police probation penalty in Egypt and its excessive use to harass political activists. The first part tracks down the historical evolution of the penalty in relation to the political and social changes in the country. The second part presents a legal interpretation of the penalty, meanwhile; the third part highlights the political use of this penalty to repress political activism. The fourth part sheds light on the violations associated with penalty execution in Egypt. The paper also analyzes legislations related to this penalty most of which are stated in the penal law. This is in addition to the testimonies, gathered and documented by the researchers of Egyptian Front, of individuals who are currently under police probation on the backdrop of political cases.
The probation law goes back to the era of Mohamed Ali. The law stipulates that individuals who are proven to have violated a law are to be put under government surveillance for a period of time determined by the administration. Police probation has been included in the criminal law issued year 1883. This law states that he who has been sentenced to hard labor shall be put under police probation, after release, for a period that is
equivalent to his prison term. Meanwhile, he who has been imprisoned for theft shall be put under probation for a period that ranges from 2 to 10 years. In July 13th 1891 a high order was issued regarding the homeless and suspects, yet, it was brutal as the probation duration, exemption and mitigation policies were not determined. However, in July 29th 1900 a framework for police probation law was established where the brutal restrictions of this penalty were alleviated. For example, the probationer was allowed to change the probation place 6 months after the sentence. Also, the law stated the number of probation visits; four times a month in case he lives in the same area as the police station or once a month if his residence is in a faraway place. This law also exempted the probationer from being present at home during the night in case his job dictated so. In addition to this, the law provided that the probation years to be five years at maximum and a one year imprisonment incase probation conditions were violated. At last, this law permitted the exemption after spending half the period in cases of commitment and good behavior.

In the Penal code issued year 1904, amendments to the law on police probation were adopted. These amendments included limiting the probation to those who were sentenced to hard labor or committed grave offenses. Also, the probation was an additional penalty to those sentenced to prison for crimes like going back to theft or killing
and poisoning the animals. The law also provided for probation exemption in case of presenting a lawful excuse. After a period of political instability at that time in Egypt, the Administrative exile law number 15 of 1909 was issued to apprehend serious criminals. This law stipulated that he who is known to have committed any acts of infringement against individuals, property or threatening others shall be put under probation for a period that doesn’t exceed five years. Also, the probationer had to provide a personal or monetary guarantee as a proof of future good conduct or otherwise he would be appointed to a residence in his homeland. This decision is issued by a committee comprised of the governor, the head of the municipal court, prosecution and two notable persons.

These legislations were then followed by other laws that regulate the probation penalty. Law codes number 24 of 1932 and 98 of 1945 were issued in order to regulate issues of suspects and the homeless. Also law number 99 of 1945 identified the conditions of this penalty; a law that is, up until now, regarded as the legal frame of this penalty.

**Second: The legal framework of the police probation penalty**

Police probation in the Egyptian law is a penalty that aims to limit the convicted freedom. Its duration is determined by the judge where the probation period should not be less than six months or exceeds five years. The sentenced is forced to
stay in a particular residence during the day and spend the night in a pre-determined place and not leave it. This penalty aims to place the sentenced under police surveillance in order to prevent him from relapsing into crime. Article 28 of the penal code identified the most important cases where the probation penalty is applied:

While the penal code determines the probation cases, law number 99 of 1945 identifies the general framework for probation penalty execution, its terms and conditions, and the consequence of violating or escaping probation. According to this law, the person under probation is obliged to determine his probation place, and the MOI has the legal right to agree or reject it. The MOI assigns another place for the probationer to stay in
or obliges him to go to the police station every day from dusk to dawn. On violating these conditions, the probationer might be sentenced one year to prison in accordance with Article number 29 of criminal law and law number 99 for the year 1945. Examining the probation law, it is found that terms and conditions imposed on the probation could be justified in the social and the economic context at the time of its issue (totally different contexts in the current times). Considering current working conditions, for instance, a shift in the working hours and conditions as well as the labor law has occurred. Existing legislators should have regarded the aforementioned massive changes in the pursuit of reforming legislations to suit societal changes. Looking at legislations of other countries, it is found that a number of western countries introduced the concept of “Electronic probation” as an alternative to the conventional means to supervision. This modern penal policy requires the probationer to put on an “Ankle monitor” to be tracked down by the satellite instead of having to attend to the police station. This provides the person on probation adequate freedom to engage in the society while keeping a track of his movements to ensure he doesn’t relapse into crime.

**Third: The political framework of probation enforcement**

According to articles number 28 and 375 of the Egyptian criminal law, the judiciary has the right

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All those sentenced to hard labor or jailed for committing an offense that threatens national security shall be put under probation after their release for a period that is equal to their sentence while not exceeding five years.

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Article no 28 of Egyptian Criminal law.
to place convicts under probation for committing crimes of national security, bullying, and show of force; crimes that are, in some situations, associated with political activism.

First: Crimes of National security

The clause on criminal offenses and petty crimes included, as per the criminal law, a number of crimes: corresponding with a foreign country, destroying records of national security, negotiating with a foreign country against the interest of own country, requesting money from a foreign country to harm the country’s national interest, broadcasting fake news during war, establishing an NGO with the intention to defy authority or combating the fundamental principles of the state. This has opened the door for the application of the probation penalty on political actions that might be interpreted and regarded as a threat to the national security or harm to the country’s interest.

Second: Crimes of show of strength and threat of violence

The following infograph sheds the light on the provisions of three cases of political nature after 2013. These provisions explain the judiciary’s enforcement of police probation penalties on political activists.
It can be alleged that vague and elastic language of the criminal law articles gave the judiciary the opportunity to regard acts of political activism as criminal offenses. For instance, protesting which is a simple act of political activism is regarded as demonstration of force and violence. This leads to criminalizing peaceful acts and also the widespread enforcement of probation on political activists.

**Fourth: violations associated with police probation enforcement**

From a philosophical perspective, the police probation period is allegedly regarded as a transitional phase that provides the convicted
person the chance to be reintegrated into the society, lead a proper life, and encourage him to abide by the law.

Examining the conditions of probation, it is found that the arbitrary enforcement and interpretation of this penalty contradicts the aforementioned propagated philosophy. The ministry of interior is legally authorized to determine measures of probation without any judiciary oversight, and this leads to the primacy of security measures which dictates further restrictions and excessive arbitrary measures that violates the rights of the probationer to a just punishment; a situation that hinders the reintegration of the probationer into the society. This clearly appears in the violations that criminal and political probationers face during police surveillance. For example:

1- The coercion to spend probation in the police station

As per Article number 5 of the penal law 99 for the year 1945, the probationer has the right to choose the probation place as well as the place of residence with exception to those whose residence is not known according to articles 6 and 7 of the same law. Yet, in practice, the probationer is deprived of this right and is forced to spend the night in the police station. The rationale behind such measures is that the probationer’s home is “not suitable” for probation, and sometimes no reasons are stated. This negatively affects the probationer’s

Imprisonment and other measures that result in cutting off persons from the outside world are afflicitive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation

Rule no 3 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)
relationship with his family due to the excessive effort that needs to be exerted in order to fulfill his obligations towards his family before going to probation at 6 pm every day.

2- Violation of the right to a humane probation space:

The MOI continues to ban probationers from spending the probation period in their homes, but it has not taken any measures to improve the conditions of the probation spaces inside the police stations. The probationer is made to spend his night in the hallways of the police station, right outside the doors of the prison cell, or even inside the cell with the other detainees.

One probationer who has been under surveillance for a year, said that at the time he had begun carrying out the penalty, there was no designated place for probationers to sleep. Another probationer described the probationers’ room as “a room that looks a lot like a cell,” adding, that “the police station has not furnished it or equipped it with the basic necessities for sleep, as the doors close, it turns into a nighttime jail cell.” The lack of access to restrooms represents another violation against the probationers as they are not allowed to use the police officers’ restrooms and can only use visitors’ restrooms. One of the probationers stated that the police station in which he was carrying out his
probation period had installed a urinal inside the room so as to keep the probationers from using the station’s restroom.

3- Forcing the probationer to commit to extrajudicial work

The probation officers force the persons under probation, especially criminal probationers, to commit to cleaning work, smashing, moving wastes, and serving police officers with no monetary reward. Not only that, they get scolded and forced to commit to such work. The absence of codes that regulate the communication between the police officers and the probationers leaves it to the ultimate judgment of the police administration. In a personal interview, one person under probation says that sometimes they were detained beyond their official probation hours when they refused to do the requested work. Also, the provision of waivers and permission of absence in most cases is on condition that the probationer executes the requested work for the sake of station officers.

4- Restricting the probationer’s right to work

The person under probation has to attend to the police station from 6 pm to 6 am throughout the whole probation period. This is a real challenge as this might prohibit the probationer from committing to a stable job and hence attaining
financial stability for himself and his family. The prisoner hence lives in constant fear of dismissal from work in case it’s far from his probation place. One person under probation says that traffic is the reason he arrives late to probation which makes him under constant threat of renewed detention. The arbitrary implementation of the punishment is a reason the person under probation might lose a respectful job and relapse into crime.

5-The threat of renewed detention
Even though the probation law, in article number 13, stipulates that he who violates the probation conditions shall be sentenced one year to prison, yet it doesn’t provide regulations that would prevent police officers from fabricating accusations of violating probation or escaping attempts. On the other side, there is no efficient mechanism by which the probationer can refute the police accusations before being referred to prosecution. After the police officer files a report against the probationer for alleged probation violations, escaping attempt, or late arrival, he is detained to be later referred to the prosecution. This is what in fact happened to activist Ahmed Maher in June 2017 where he was accused of escaping probation and hence was referred to prosecution on the backdrop of arriving half an hour late to probation because his mother was sick.
6- Violating the right to travel inside the country

While the person under probation cannot travel outside the country as per the law, he cannot technically travel inside the country either due to probation conditions. Such measures demand the probationer’s attendance to the police station at 6 pm, and thus prohibit him from travelling during his probation period which might last for years. Arriving late to the police station due to traffic or lack of transportation might subject the probationer to charges of escaping probation and get sentenced one year for that.

In an interview with a person who is currently under probation, he says that whenever he travels to another governorate he leaves at 7 am directly after signing out and start moving back at 2 pm to avoid being stuck in traffic.

Even though the probation penalty is supposed to deprive the probationer of some of his rights, yet the arbitrary measures such as refusing to give out permission of absence hinder the reintegration of the probationer into the society which is supposedly one of the objectives of the penalty.

7- Repetitive probation waivers refusal

The probationer, as per the law, is entitled to a temporary probation waiver. Also, the law authorized the police administration to assess

« Everyone has the right to freedom of movement and residence within the borders of each State »

Article (27-4) Freedom of movement, United Nations, Committee of political and civil Rights
and estimate the provision such waivers. Since the law doesn’t determine the conditions upon which waiving is provided, this has led some probationer officers in some police stations to associate the provisions of late permits and waivers with the probationer’s degree of cooperation with the police officers, a situation that gets worse with political probationers. One probationer said that though the chief officer and the head detective are authorized to provide waivers for criminal probationers, they are not entitled to do so with political probationers. Only national security has the authority to provide waivers, and such requests are mostly refused without any reasons.

8- Restricting one’s right to education and reading

Theoretically, there is no law that prohibits the probationer’s right to education or bans books inside probation places. Yet, technically, the measures imposed by this penalty inhibits the educational achievement of the probationer; especially if his or her classes are in the evening like adult literacy classes and post graduate studies in universities and institutes. Instead of encouraging the probationer to pursue his studies for further self-development, the probationer faces arbitrary refusal from the police station, to receive temporary waivers and late permits. Also, as per the law, probationers could get books inside of the police station, yet, according to one

The chief officer who is responsible for the person under probation is authorized to grant him a waiver for a period that doesn’t exceed fifteen days. The waiver shall be cancelled if the behavior of the person under probation became suspicious.

Article 8 of Criminal law number 99 for the year 1945

Every citizen has the right to education.

Article 19 of the Egyptian constitution.
of the probationers, allowing or prohibiting some books or studying notes is subject to the estimation of the probation officer.

9- **Banning communication with the outside world**

The police officers don’t differentiate between a criminal detainee and a person under probation. Even though there is no law that prohibits a probationer from communicating with the outside world, permitting mobiles or laptop is not allowed during probation time just like criminal detainees.

10- **Restricting ones right to political activism**

The widespread enforcement of police probation penalty on political opponents and activists in Egypt is threatens their political engagement and activism after serving their sentence. The political probationer is always under the pressure and threat of police administration arbitrariness. For example, a probationer might be sentenced to prison if he freely expressed his opinion, also, if he acted, said, or gestured what can be interpreted as incitement to political activism. Another form of intransigence the probationer face is the inspection. One probationer says that searching a criminal probationer is only to assure he doesn’t carry any weapons or drugs, on the other hand, the inspection procedures of the political probationer takes much longer time in the search for books or any means of communication.
The 10 Violations of the Conditional Monitoring

- Banning communication with the outside world
- Restricting one's right to education and reading
- Restricting one's right to political activism
- The coercion to spend probation in the police station
- Violation of the right to a humane probation space
- Forcing the probationer to commit to extrajudicial work
- Restricting the probationer's right to work
- Repetitive probation waivers refusal
- Violating the right to travel inside the country
- The threat of renewed detention
Over the past few years, members of the Egyptian opposition have been increasingly facing police probation as a form of punishment, due to their political activism. This takes place in accordance with the Egyptian penal code, such as article 375, which pertains to demonstrating force and violence. Those subjected to this punishment are made to spend the time between sunset and sunrise inside the probation area, which is usually a police station. This punishment is accompanied by several violations, primarily debilitating the probationer from working, moving, learning, and fulfilling his social obligations towards family members and loved ones. In addition, the probationer’s constant fear of the threat of renewed detention in case he or she breaks the surveillance regulations makes this punishment akin to being jailed.

As the implementation of the police probation penalty increases, several questions arise as to the fairness of the law that was written over sixty years ago, under social and political conditions that differ completely from those of today. Contrary to it’s proposed aim of reintegrating probationers into society, the probation law has reflected negatively
on the personal rights of those who are put under surveillance. This raises further questions as to whether police stations are capable of taking in, and supervising, the increasing number of people who are put under probation.

Building on the aforementioned points, the Egyptian Front offers these police recommendations to the authorities:

1- We demand that the Ministry of Interior decrease the arbitrary procedures that accompany the implementation of the probation and to humanize the penalty by increasingly applying it within the home and pardoning cases, as per article 8 in law no. 99 for the year 1945. We also demand that the monitored person’s rights are respected, that his complaints are seriously investigated, and that the constant threats of re-imprisonment end.

2- We ask the Egyptian parliament to reconsider the legal implications of the police probation law and the authority it grants the MOI in implementing the punishment. We request that parliamentarians develop different procedures that guarantee that the philosophy of the law itself is attained, through electronic surveillance, judicial examination, and labor that benefits the public. In addition, we ask that the parliamentarians re-examine the wording of the law in order to ensure that it will not be misused politically to harass members of the opposition.
3- We recommend that the judicial authorities put an end to charging opposition figures on the backdrop of their political activism, to subjecting them to police probation as a form of intimidation and as a show of strength. In addition, we demand judicial supervision over places of detention, including the probation area, as well assurance that the MOI will not arbitrarily demand probations or refrain from issuing pardons. Finally, those who violate the rights of the probationer must be held accountable.

4- We urge the National Council for Human Rights to do its part, along with other civil society organizations, to watch over the implementation of the penalty and all of the violations that take place against those who are under police probation.
Appendices


**French Law**

- **Infraction**: 3 months to 3 years detention
- **Duties of Punishment**
  - According to Articles 44 and 167 of The French Penal Law the observed should:
    1. Visit the Police Station which he is registered at once every 2 months
    2. Respond to the Police’s Calls
    3. Commit to offering help to enable the sentenced of leading a normal life and avoid breaking the law
    4. Implement measures in order to assist an organization that helps those released from police probation

- **Term of the sentence**: Misdemeanor: 2 to 5 years, Felony: 5 to 10 years
- **Type of penalty**: Supplementary/original punishment

**Lebanese Law**

- **Infraction**: Imprisonment with work from 3 months to 3 years
- **Duties of Punishment**
  - According to Article 84 of the Lebanese Penal Law the monitored commits to:
    1. Prohibition of entering bars for criminals who commit crimes under influence of alcohol
    2. Prohibition of entering certain places
    3. The sentenced is put under direct surveillance by a specialized committee that help the monitored resist the negative impact of the crime on him

- **Term of the sentence**: minimum 1 year, maximum 15 years
- **Type of penalty**: Precautionary measurement
Dual Punishment

Infraction
less than a year imprisonment with a financial penalty of 5000 AED

Term of the sentence
not more than 5 years

Type of penalty
criminal measure

Duties of Punishment
According to article 115 of the Emirati Penal Law the observed commits to:
1-Not changing his address
2-Turns himself in to the authorized administrative body
3-Not going to the places specified by court
4-Not leaving his house at night without permission of the administrative body
Appendix2: Samples of Political Cases to which Police Probation has been sentenced

A) AL Fath Mosque events:
Department 21 of North Cairo has issued on the 18th of September 2017 hearing of case number 8615 for the year 2013, Criminal Court of Aybakeya/ 4163 for the year 2013 North Cairo, publically known as the events of Al Fath mosque a police probation penalty of 5 years to all the ones charged. The police probation penalty is to be fulfilled by those charged after they complete their sentences which varied from harsh imprisonment to life sentences. Facts of this case are due to the clashes and demonstrations that took place in the perimeter of Ramsis Street on the 16th and 17th of August 2013 as well as the sit-in by a number of deposed President Morsi’s supporters. They were condemned of illegal gathering on the street, demonstration of force and violence, planned murder attempt, vandalism of public buildings and places, attempting use of explosives (tear gas bombs), assault of 2 employees, ownership of white weapons and guns and disrupting traffic.
B) Events of the 3rd anniversary of the 25th of January revolution 2014

Department 23 of North Cairo has issued on the 26th of February 2017 in regards to case 12096 for the year 2014, criminal court of Abdeen 1561 for the year 2014, Middle Cairo, Publically known as the 3rd anniversary of 25th of January Revolution a police probation penalty of one year to all those charged.

Facts of this case are due to opposing demonstrations that took place in the perimeter of Downtown Cairo on the 3rd anniversary of 25th of January revolution. A large number of people belonging to various political trends have been arrested. The Prosecution charged the 227 defendants of mobbing, demonstration of violence and force and organizing riots without permission with the intention of violating the system and security.
C) Case of the Activists Ahmed Maher, Mohamed Adel and Ahmed Doma:

Southern Cairo Court of First instance has charged on the 22nd of December 2013 in regards to the case No. 9593 for the year 2013, Abdeen Misdemeanor Court, the activists Ahmed Doma, Mohamed Adel and Ahmed Maher with 3 years of imprisonment and an equivalent time of Police probation penalty upon their release. The Prosecution had condemned the sentenced with mobbing, participating in a riot that risks national security without notifying the competent authority, demonstration of power, scaring the inhabitants of Abdeen district and attacking the security forces of the Abdeen court while handing over Ahmed Maher on November 30th 2013, based on the prosecutions decision to arrest him for being charged of violating the law of protest.