

# **PUNISHMENT**

## **Theories of Punishment in the Maltese Legal System**

Punishment is generally defined as the deprivation of certain rights, often with a focus on the loss of liberty. However, there are various types of punishment that do not involve imprisonment.

### **Why does criminal law exist?**

The purpose of criminal law is fundamentally to deter crime and to impose consequences for committing offences. Therefore, the rationale behind punishment is twofold:

1. To prevent criminal acts.
2. To uphold respect for the law.

The objectives that punishment aims to fulfill are:

1. Deterrence.
2. Imposing a punishment that aligns with fairness and justice.

## **Traditional Theories of Punishment**

There are two main schools of thought concerning punishment:

1. The Retributive Theory.
2. The Utilitarian Theory.

### **1. The Retributive Theory**

Stemming from Roman law and rooted in earlier traditions, this theory is often described by the phrase "an eye for an eye, a tooth for a tooth." Its primary principles include:

- Punishment serves to uphold societal values by addressing harm caused.
- Punishment is necessary to ensure fairness to law-abiding citizens.
- The severity of punishment should correspond to the seriousness of the crime.

## 2. The Utilitarian Theory

This theory emphasizes crime prevention for the common good. Its main methods include: (i)

**Policing** – Effective law enforcement is critical for crime prevention. (ii) **Deterrence** –

Discouraging criminal acts can be categorized into:

- **Individual:** Discouraging the offender from repeating the crime.
- **General:** Deterring others with similar intentions.
- **Long-Term:** Cultivating a societal aversion to crime. (iii) **Reform** – Leading to the principle of reformatory justice, which Malta applies in its criminal justice system.

This approach suggests that rehabilitating offenders is more beneficial to society than mere punishment. For this reason, prisons are referred to as "correctional facilities."

In recent years, Maltese law has shifted away from traditional punishments like imprisonment or fines, favoring alternative, non-custodial penalties such as suspended sentences and probation orders. This shift is reflected in landmark cases like *Il-Pulizija vs. Francis Bonnici* (Court of Criminal Appeal, 25th March 1975) and *Il-Pulizija vs. George Zammit* (Court of Magistrates, 4th February 1985), where the courts emphasized that offenders should be rehabilitated and offered alternative punishments to support reintegration into society.

Offences are categorized as either crimes or contraventions. Generally, the Criminal Code itself specifies whether an offence falls into one of these two categories. If the Code does not explicitly categorize an offence, the type of punishment it carries serves as a good indicator. This approach applies not only to the Criminal Code but also to offences under other laws, such as the VAT Act and the Press Act.

Under Article 7 of the Criminal Code, punishments for crimes and contraventions are distinct:

- **Crimes** may be punished with:
  - imprisonment,
  - solitary confinement,
  - interdiction,
  - fine (multa).
- **Contraventions** may be punished with:
  - detention,
  - fine (ammenda),
  - reprimand or admonition.

Each of these punishments is outlined below:

### **Imprisonment (Article 8)**

The duration of imprisonment is set by law for each offence, often within a specified range. The Court decides the specific punishment based on the case's circumstances.

### **Solitary Confinement (Article 9)**

This involves keeping an imprisoned individual isolated, allowing access only to prison staff or those with authorization. Solitary confinement cannot exceed ten consecutive days, with at least two months between terms, except in certain cases. Before imposing this punishment, the Court must ensure the offender is medically fit to undergo it.

### **Detention (Article 12)**

Detention, limited to a maximum of two months, differs from imprisonment in that it does not appear on the person's criminal record.

### **Interdiction (Article 10)**

An interdicted individual is barred from specific activities, such as entering public contracts or holding certain offices. Interdiction can be general (disqualification from all public roles) or special (disqualification from specific roles or professions). It can also be permanent or temporary, lasting up to five years. The Court may discontinue an interdiction order if justified. Violating an interdiction can result in a fine (multa) or up to three months of imprisonment.

### **Fines: Multa and Ammenda (Articles 11 & 13)**

The primary difference between these fines is monetary:

- A multa ranges from €23.29 to €1,164.69.
- An ammenda ranges from €6.99 to €58.23.

Failure to pay a multa leads to a term of imprisonment (up to six months), while failure to pay an ammenda results in detention.

### **Reprimand and Admonition (Article 15)**

A reprimand or admonition is delivered publicly by the judge or magistrate who heard the case.

## **Degrees of Punishment**

Article 31 of the Criminal Code outlines fourteen degrees of punishment. When a degree is increased or decreased, this adjustment is based on the maximum penalty. For instance, the punishment for rape, with a range of three to nine years, would increase to a range of six to twelve years if a degree were added due to aggravating circumstances.

More notes on :

## **PROBATION**

Under Maltese law, Chapter 446 of the Laws of Malta, titled the *Probation Act*, governs probationary measures, including the consequences of committing another offense during the probation period. Here's a detailed explanation of what happens:

### **1. Probation Period and Conditions**

When an individual is placed on probation under Chapter 446, they are not given a prison sentence but are allowed to remain in the community under specific conditions. These conditions aim to support their rehabilitation and may include regular meetings with a probation officer, attendance in therapeutic programs, and other behavioral restrictions. Probation may last up to three years.

### **2. Commission of Another Offense During Probation**

If the probationer commits another offense during the probation period, this breach can trigger serious consequences. The Probation Act specifies that the offender may face repercussions for not only the new offense but also for breaching the original probation conditions.

Under **Article 7** of Chapter 446, if a probationer is convicted of an additional offense during their probation, the court has the discretion to:

- Revoke the probation order.

- Impose a sentence for the initial offense, the one for which probation was originally granted, as if the offender had not been granted probation in the first place.

### **3. Court's Discretion in Sentencing**

The court considers several factors before deciding on the appropriate action, including:

- The nature of the new offense.
- The circumstances of the breach.
- The probationer's behavior and compliance up until the breach.

In cases where the new offense is minor, the court may choose to extend or amend the probation conditions rather than revoking probation outright. For more severe or repeated offenses, however, the likelihood of revocation and imprisonment increases.

### **4. Probation Officer's Role in Reporting Violations**

The probation officer assigned to the case is responsible for monitoring compliance and reporting any breaches. If the officer becomes aware of the new offense, they must inform the court, providing a report on the probationer's overall behavior and response to the probation order.

### **5. Potential for Amended or Additional Conditions**

In some cases, instead of revoking probation, the court may opt to impose additional conditions. For instance, it might require the probationer to attend specific rehabilitation or counseling programs, especially if substance abuse or mental health issues contributed to the violation.

### **6. Rehabilitation Focus vs. Punishment**

The Probation Act is generally structured with a rehabilitative focus, emphasizing second chances. However, repeated or serious offenses can diminish the court's willingness to maintain a rehabilitative approach, prompting a shift toward a punitive response to protect public safety and uphold judicial integrity.

In essence, committing another offense during probation jeopardizes the offender's original leniency and can lead to a range of punitive actions, including revocation of probation and sentencing for the original offense, depending on the court's judgment on the specifics of the violation.

## **1. Understanding a Suspended Sentence**

A suspended sentence is a form of conditional punishment where the court delays imprisonment on the condition that the offender does not commit any new offenses during a specified period (the operational period). If the offender abides by the law during this time, they avoid serving the original prison sentence. Suspension periods can vary but often last between one to three years.

## **2. Effect of a New Offense During the Suspension Period**

Under Chapter 446, if the offender commits another offense during the suspended sentence period, this is considered a breach of the suspended sentence. The law generally takes a strict view on such breaches, as the suspended sentence was granted on the basis that the offender would refrain from further criminal activity.

**According to Article 28B of Chapter 446**, if the court convicts the offender for the new offense, it must take additional steps regarding the original sentence. Specifically:

- The court will usually order the original suspended sentence to be activated, meaning the offender must serve the term of imprisonment initially imposed.
- This applies whether or not the new offense is similar to the original one.

## **3. Sentencing for Both the Original and New Offense**

The court will proceed with sentencing for the new offense as a separate matter. This means the offender will typically face:

- **The original sentence:** Which becomes active due to the breach of suspension.
- **A new sentence:** For the latest offense committed during the suspended sentence period.

Depending on the court's discretion, these sentences may be served consecutively (one after the other) or concurrently (at the same time). However, consecutive sentencing is common in cases where the court deems the offender's conduct as needing additional deterrence.

#### **4. Role of the Court's Discretion**

While the law generally mandates activation of the suspended sentence upon a new conviction, the court may still assess:

- The nature and severity of the new offense.
- The circumstances surrounding the breach, such as whether the offense was minor or if the offender demonstrates remorse and rehabilitation efforts.

In rare cases, the court may decide not to activate the suspended sentence if there are compelling mitigating factors. However, such discretion is used sparingly, primarily for minor offenses that are clearly distinguishable from the original crime.

#### **5. Implications of Committing Multiple Breaches**

If the offender commits multiple breaches, the likelihood of leniency decreases significantly. The court is more likely to enforce the original sentence in full without further suspension or to impose additional penalties to discourage future breaches.

#### **6. The Probation Officer's Role**

While the Probation Act focuses on probation orders, probation officers may still be involved in suspended sentence cases if the offender is required to follow specific behavioral conditions. For example, if the suspended sentence includes conditions like counseling or rehabilitation, a probation officer might report on compliance and assist in addressing breaches.

#### **7. Purpose of Suspended Sentences and Consequence of Breaches**

The principle behind suspended sentences is to provide offenders an opportunity to reform without facing immediate imprisonment. A breach, especially by committing another offense,

undermines this objective, and as a result, the court is mandated to enforce the original sentence as a form of accountability.

## **CONDITIONAL DISCHARGE**

### **1. Definition of Conditional Discharge**

A conditional discharge is a form of leniency where the court refrains from imposing a sentence on an offender, provided they adhere to a condition of good behavior for a defined period. If the offender does not commit any further offenses during this period, they will not be penalized for the original offense. It essentially provides the offender with a second chance to avoid punishment by maintaining a clean record.

### **2. Legal Basis and Applicability**

Chapter 446, *The Probation Act*, grants the courts the authority to issue a conditional discharge when the court believes that a formal sentence is unnecessary due to the circumstances of the offense and the character of the offender. The conditions for granting a conditional discharge include:

- The nature of the offense: Typically, this is applied for minor, non-violent, first-time offenses.
- The offender's character: A conditional discharge is more likely to be given to individuals with no prior criminal record or those deemed unlikely to reoffend.

### **3. Conditions of a Conditional Discharge**

The discharge is typically granted with a probationary period, which can last up to three years. During this time, the offender must not:

- Commit any additional offenses.
- Violate any specific conditions set by the court, such as staying away from particular places or people, or attending rehabilitative programs if deemed necessary.

These conditions are designed to help the offender reintegrate into society without immediately facing punishment but still under the guidance and supervision of the law.



## **4. Consequences of Breaching the Conditional Discharge**

If the offender commits another offense or fails to adhere to the conditions set by the court during the probationary period, the conditional discharge is considered breached. The court can then:

- Reopen the case and impose a sentence for the original offense as if the discharge had never been granted.
- Consider the breach as an aggravating factor, potentially resulting in a harsher sentence for the original offense.

Breaching the conditional discharge effectively nullifies the leniency initially provided by the court, holding the offender accountable for both the original and new offenses.

## **5. Role of Probation Officers**

In cases where the court attaches specific conditions to the discharge, probation officers may be involved to monitor compliance. They provide the court with periodic updates on the offender's behavior and adherence to any prescribed conditions. If any breach occurs, the probation officer may report it to the court, prompting a review of the discharge order.

## **6. Purpose of Conditional Discharge**

The conditional discharge measure in Maltese law emphasizes rehabilitation over punishment, especially for minor or first-time offenders. It is aimed at:

- Providing a second chance without the consequences of a formal sentence.
- Reducing recidivism by promoting good behavior without the stigma of a criminal sentence.
- Allowing the legal system to focus resources on more serious offenses.

The option of a conditional discharge reflects the Maltese criminal justice system's emphasis on proportionality and rehabilitation, particularly when dealing with minor offenses and individuals who show potential for reform.

## **7. Distinguishing Conditional Discharge from Other Alternatives**

A conditional discharge differs from a *suspended sentence* and *probation*. In a suspended sentence, the offender receives a sentence that is deferred on condition of good behavior. In probation, the offender must comply with court-mandated programs under close supervision. With a conditional discharge, there is no sentence or mandated supervision unless a breach occurs.