

Analysis of the Judicial or Administrative Nature of Criminal Sentencing Execution and Its Consequences

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Abstract

The resolution of disputes and the imposition of punishment are judicial matters exclusively within the jurisdiction of the judiciary. Following the issuance of a verdict, the execution of the criminal sentence takes place, which is distinct from the adjudication itself. Given that adjudication appears to be confined to resolving disputes and issuing judgments, there is a debate regarding whether the nature of sentence execution is administrative or judicial. This study, using a descriptive-analytical method and relying on library sources, seeks to answer the question: Is the execution of criminal sentences judicial or administrative in nature? And what are the consequences of this classification? The research findings indicate that, in addition to some jurisprudential perspectives defining adjudication as the establishment and enforcement of rights, the logical value of a judge's decision lies in resolving disputes, which is inherently contingent upon enforcement and execution. Therefore, execution is an integral part of adjudication, as the enforcement of a ruling gives meaning to the concept of dispute resolution. This is precisely why, in contrast to civil cases, the enforcement of punishment—even in offenses subject to private prosecution—does not require the victim's consent for implementation. By accepting the judicial nature of sentence execution, the presence of a judge in the execution process, an organized and structured system for enforcement, and the application of fair trial principles—including judicial independence, legality, and judicial impartiality—at this stage become necessary.

Keywords: Criminal sentencing execution, administrative nature of execution, judicial nature of execution

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1. Introduction

From the perspective of the separation of powers, governmental authorities in every country are divided into the legislative, executive, and judicial branches. The maintenance of social order and the prevention of overlapping responsibilities among these branches necessitate that each branch performs only the duties within its jurisdiction. According to this analysis, legislation falls under the jurisdiction of the legislature, the implementation and administration of state affairs belong to the executive, and the judiciary is responsible for adjudication and dispute resolution.

The expansion of societies has led to a departure from the traditional concept of the separation of powers. Various institutions have taken on responsibilities related to legislation, adjudication, and execution, resulting in an overlap of functions among the branches. This overlap led to the emergence of a theory distinguishing between the intrinsic functions and the ancillary functions of the branches (Jamshidi & Rostami Ghazani, 2013). In the modern concept of the separation of powers, some intrinsic functions of each branch have been delegated to others as ancillary duties. Consequently, no clear boundary exists among the three governmental functions—legislation, adjudication, and execution—which in some cases overlap. This has led to uncertainty and challenges in distinguishing between legislative, judicial, and executive functions. Among these challenges is the overlap between the responsibilities of the executive and judicial branches, which has resulted in difficulties in distinguishing between administrative and judicial acts.

One consequence of this issue is the ambiguity concerning the nature of certain institutions affiliated with the judiciary. The execution of criminal sentences is one such institution whose administrative or judicial nature remains uncertain. Criminal sentence execution follows the issuance of a judgment and pertains to enforcing the punishment and determining the manner of its execution. From one perspective, this process falls outside the concept of adjudication and does not possess a judicial nature. It is not among the intrinsic functions of the judiciary and, consequently, can be separated from it. In other words, the execution of a criminal sentence is an administrative act and falls within the intrinsic functions of the executive branch. Under this interpretation, the presence of a judge—or at least their active involvement—is not necessary in the process of executing a punishment.

Since no independent study has been conducted on whether the execution of punishments is judicial or administrative in nature, and only one legal scholar has generally discussed the distinction between administrative and judicial acts (Katouzian, 2022), this research seeks to define administrative and judicial acts to establish a precise understanding of the nature of criminal sentence execution and its implications. Accordingly, this study aims to answer the following questions: What is the nature of administrative and judicial acts? Under which category does the execution of punishments fall? And what are its legal consequences? The ultimate goal is to determine, based on legal criteria, whether the execution of criminal sentences should remain within the judiciary or be transferred to other branches. To achieve this, the study will first analyze administrative and judicial acts along with their defining criteria, then assess the execution of punishments in light of these criteria, and finally examine the legal consequences of this classification.

2. The Administrative Approach to the Nature of Criminal Sentence Execution

The administrative approach to criminal sentence execution considers it an administrative act that does not fall within the intrinsic duties of the judiciary or, at the very least, is not among its core functions. This perspective allows for the delegation of sentence execution to the executive branch, which is its principal administrator. To examine this hypothesis, it is necessary to first define administrative acts and their criteria before analyzing how the execution of sentences aligns with these criteria.

2.1. *The Concept of Administrative Acts*

To clarify the nature of administrative acts, it is essential to distinguish between "administration" and "administrative acts." The term "administration" in its literal sense means management or supervision (Jafari Langroudi, 2021). In legal terminology, "administration" refers to all activities carried out by the state or under its supervision to fulfill public needs or maintain public order (Emami & Ostovar Sangari, 2024). The concept of "administrative acts" extends beyond mere administration, as administration consists of the organizational structures and agencies under the supervision of the executive branch, while administrative acts represent a distinct type of function that exists alongside those of the three branches of government (Ziaei Beigdeli, 2024).

From another perspective, law enforcement is not exclusively performed by the executive branch in its organizational sense, as the judiciary also enforces laws through judicial functions. Furthermore, the executive branch does not have a monopoly on administrative execution; thus, administrative acts are not a reliable criterion for distinguishing the executive branch from the other branches (Vaez, 2013). In support of this view, Article 157 of the Constitution establishes that administrative and executive functions within the judiciary are carried out by the head of the judiciary, which is a non-executive body. This confirms that administrative functions also exist within the judiciary.

From a comparative perspective, administrative acts primarily fall under the jurisdiction of the executive branch. In countries with constitutional courts, defining administrative acts is even more crucial, which is why these definitions are often codified in their laws. According to Article 35 of the German Administrative Procedure Act of 1976, an administrative act includes any order, decision, or other sovereign measure taken by a public authority for the regulation and organization of a specific matter within public law, provided that it has legal effects and is addressed to a particular group of people (Hadavanad et al., 2016).

2.2. *Criteria for Identifying Administrative Acts*

A precise definition of administrative acts requires establishing their criteria, which are not necessarily derived from their definition. These criteria can be analyzed from three perspectives.

2.2.1. *Formal Criterion*

According to the formal criterion, an act is considered administrative based on the authority that performs it, regardless of its intrinsic nature. The formal requirements and procedural aspects of the act serve as its primary distinguishing features. As a French legal scholar simply stated, "All acts performed by an administrative authority, regardless of their internal legal nature, are considered administrative acts in a formal sense" (Dughi, 2009). In other words, from this perspective, an administrative act is any action or decision taken by a governmental administrative body or a public legal entity. Based on this definition, all decisions issued by such entities, even if they have a legislative or judicial nature, are subject to the rules governing administrative actions. Some scholars define administrative acts as actions performed by a state official in their administrative capacity, including administrative decisions and directives issued by heads of government agencies (Jafari Langroudi, 2021).

The formal criterion is only valid if each governmental branch operates strictly within its jurisdiction. If the criterion is based solely on the authority making the decision, then each branch will attempt to expand its jurisdiction, meaning that any action it undertakes will automatically be categorized as legislative, administrative, or judicial, depending on the branch responsible for it (Masoumi Zadeh, 2017). More specifically, to implement the separation of powers effectively, the executive branch has been granted authority over matters that are not inherently executive in nature. For instance, the creation of administrative courts and the drafting of regulations and directives by the executive branch are fundamentally judicial and legislative functions, which have been entrusted to the executive due to practical considerations. Consequently, merely identifying an act as being performed within the executive branch does not necessarily mean it is administrative in nature. Thus, distinguishing between administrative, legislative, and judicial acts requires additional criteria beyond the formal approach.

2.2.2. *Substantive Criterion*

According to the substantive criterion, the nature of the act determines whether it is administrative, judicial, or legislative. Substantively, a legislative act pertains to the preparation, drafting, and regulation of legal norms that are abstract, impersonal, and non-individual, applying to general cases. Under this view, the issuance of regulations by an administrative authority is essentially a legislative act (Emami & Ostovar Sangari, 2024).

Based on this criterion, both judicial and administrative acts are individual in nature and pertain to specific persons and cases. However, the key distinction is that a judicial decision involves the application of a legal solution to resolve a disputed situation. Therefore, acts carried out by officials on behalf of governmental agencies and the state are administrative acts, regardless of whether the institution in question is legislative, executive, or judicial. Under this criterion, the judiciary and the legislature may, in certain instances, exercise executive functions. Given that the purpose of an act is an inherent part of its nature, the goal of an administrative act must also be considered in defining its nature. Traditionally, the purpose of administrative acts is to maintain public order and meet the general needs of society (Vaez, 2022). The first aspect of this goal falls under the jurisdiction of the administrative police, while the latter is handled by public institutions such as the education system.

2.3. *Application of the Criteria for Administrative Acts to the Execution of Criminal Sentences*

In light of the established criteria for administrative acts, the execution of criminal sentences will be examined based on each of these criteria.

2.3.1. *Application of the Formal Criterion*

The enforcement of criminal sanctions, pursuant to Articles 22 and 484 of the Code of Criminal Procedure, is centralized within the prosecution office as a judicial institution. Therefore, the formal criterion cannot support the classification of criminal sentence execution as an administrative act.

2.3.2. *Application of the Substantive Criterion*

At first glance, based on the substantive criterion, the execution of punishment might be considered an administrative act, as it is not an intrinsic function of the judiciary. The primary duty of the judiciary, as stipulated in Clause (1) and the imposition of punishments outlined in Clause (4) of Article 156 of the Constitution, is the resolution of disputes. Other obligations mentioned in this article, including the enforcement of discretionary and fixed punishments, occur after judicial proceedings. Judicial proceedings typically require a three-party structure (plaintiff, defendant, and judge), whereas the execution of punishment does not conform to any of these structural elements and lacks an inherent judicial nature. Consequently, it is considered an ancillary function of the judiciary.

Under this framework, the judicial nature of punishment, whether in the sense of a judge's involvement in its implementation or in the broader sense of judicial discretion in individualizing punishment, does not necessarily relate to the execution of sentences. The judiciary's role is to fulfill a fundamental objective of governance—ensuring order and justice—which is achieved through dispute resolution and the administration of justice in society. More broadly, judicial affairs can be categorized into three areas: adjudication in the strict sense, judicial administrative matters, and affairs related to the administrative organizations of the judiciary (Ghamami & Moradi Barliyan, 2018). Among these, only dispute resolution and adjudication in the strict sense fall within the core judicial function.

This analysis, however, has its limitations, which will be further examined. From another substantive perspective—the purpose of an administrative act—criminal sentence execution does not qualify as an administrative act, as it does not provide a public service. Although it aims to establish public order, the maintenance of public order in administrative acts falls under the jurisdiction of the administrative police, which operates under executive agencies. In contrast, criminal sentence execution is carried out by judicial authorities and ultimately by the judicial police, which is part of the judiciary (Rezai Zadeh, 2013).

3. The Judicial Approach to the Nature of Criminal Sentence Execution

The judicial approach to sentence execution necessitates its concentration within the judiciary and requires the presence or at least oversight of a judicial authority in accordance with the principles of fair trial. To analyze this approach, it is first necessary to define judicial acts and their criteria before examining the execution of sentences in light of this classification.

3.1. *The Concept of Judicial Acts*

Judicial acts have been defined as a category of intentional actions carried out in accordance with legal standards to resolve disputes in court (Abedini, 2018) or as acts originating from judicial authority (Ansari & Taheri, 2009). Given the overlap in functions among the branches of government, these definitions do not provide a precise explanation of judicial acts, making the establishment of criteria for judicial acts a more effective approach to understanding them.

3.2. *Criteria for Identifying Judicial Acts*

Various criteria have been proposed to define judicial acts.

3.2.1. *Substantive Criterion (Adversarial Nature)*

Some scholars argue that a judicial act is one that resolves a dispute, meaning that a decision made within an adversarial proceeding qualifies as a judicial act (Katouzian, 2022). In contrast, matters that merely acknowledge a right—such as a court ruling that affirms a claim without dispute—are considered administrative functions in French law (Mohseni, 2012).

This analysis is subject to criticism, as non-adversarial matters also involve courts making decisions in the form of rulings that may be subject to appeal. The objective of a judicial act, as derived from Article 156 of the Constitution, may include hearing grievances, investigating complaints, resolving disputes, adjudicating legal claims, issuing decisions on matters prescribed by law, upholding public rights, expanding justice and legal freedoms, supervising law enforcement, detecting crimes, prosecuting offenders, enforcing punishments in accordance with Islamic criminal law, and taking preventive measures to reduce crime and rehabilitate offenders.

In addition to legal doctrine and the intended purpose of judicial acts, an examination of Islamic jurisprudence—specifically, the *Book of Judiciary (Kitāb al-Qaḍāʾ)*—can provide further insight into the nature of judicial acts. While some Islamic jurists narrowly define adjudication as the issuance of judgments, others adopt a broader definition, considering adjudication as a form of governance that extends beyond resolving disputes between parties. This perspective includes the enforcement of legal penalties and matters of public interest, even in the absence of a formal dispute. Adjudication, in this view, involves settling conflicts, eliminating disputes, and concluding contested matters between individuals (Yazdi, 1999). According to Sheikh Mohammad Hassan Najafi, adjudication consists of establishing a right and ensuring its enforcement in favor of the rightful party (Najafi, 2019). This definition explicitly includes enforcement and execution as integral aspects of adjudication. Thus, the value of a judge's decision lies in resolving disputes, which inherently depends on enforcement and execution.

3.2.2. *Formal Criterion*

Other analyses of judicial acts focus on the authority rendering the decision, procedural requirements, and the judicial organization itself. These aspects can be collectively examined under the formal criterion.

3.2.2.1 *Defining Judicial Acts Based on Judicial Authority*

Under this approach, any action taken by a judge is considered a judicial act. This perspective requires a definition of judicial authority, where the employment relationship and the act of adjudication determine whether an action is judicial. However, this criterion is not definitive, as Article 2 of the Law on the Duties and Authorities of the Head of the Judiciary designates the head of the judiciary as a judicial authority. Nevertheless, Article 156 of the Constitution explicitly states that

the judiciary is responsible for both "judicial" and "administrative" functions. Many of the head of the judiciary's responsibilities are administrative rather than judicial. In other words, judicial authorities also perform managerial duties and issue non-judicial decisions. Moreover, even within judicial courts, not all decisions rendered can be classified as judicial in nature.

3.2.2.2 *Criterion Based on Judicial Authority*

According to this criterion, judicial acts encompass a range of duties and powers exercised by courts in accordance with the law, including public courts, prosecution offices, revolutionary courts, the Special Clerical Court, the Special Court for Article 49 of the Constitution, the High Disciplinary Court for Judges and its prosecution office, the Military Disciplinary Court for Judges, the Supreme Court and its general assembly, the Administrative Justice Court and its general assembly, and recently, the Chief Justice of the Judiciary pursuant to Article 2 of the Law on the Duties and Authorities of the Head of the Judiciary (Mahmoudi, 2014). In other words, any act carried out by the aforementioned judicial authorities or the Chief Justice of the Judiciary is considered judicial. However, accepting this argument in an absolute sense is subject to criticism, as it is susceptible to the same objections as the last category.

3.2.2.3 *Organizational Criterion*

According to the organizational criterion, regardless of the nature of the act, the enforcement of law is considered a judicial act when it takes place within judicial proceedings and follows specific procedural rules. Thus, a judicial act is defined as a decision made by a judicial authority (organization) in accordance with a specified procedural framework (formal criterion) to adjudicate and resolve disputes in civil, criminal, and administrative matters by issuing decisions in various forms at different stages of judicial proceedings (Mohseni, 2012).

3.3. *Application of Judicial Act Criteria to the Execution of Criminal Sentences*

The judicial nature of sentence execution implies the necessary involvement of the judiciary in this process. To establish the judicial nature of criminal sentence execution, its characteristics must be analyzed in light of each judicial act criterion.

3.3.1. *Application of the Substantive Criterion*

The execution of punishment serves multiple objectives, including retribution, deterrence, rehabilitation, treatment, and restorative justice. With the emergence of rehabilitation and reintegration as key goals, serious efforts to scientifically define the nature of sentence execution and its role within the criminal justice system began in the 1960s. Legislative reforms at that time focused on humanizing the norms of criminal procedure. These developments paved the way for a new perspective on sentence execution as an integral stage of criminal proceedings. This perspective highlights the importance of implementing court decisions in criminal cases. Under this view, the execution phase is the final stage of criminal procedure and inherently judicial in nature.

Moreover, all objectives associated with punishment—whether retributive, rehabilitative, therapeutic, or compensatory—are only realized through execution. These objectives reinforce the notion that execution is part of adjudication. This is precisely why, unlike civil cases, in criminal cases, execution orders are sent to the enforcement unit directly by the judge issuing the sentence, without requiring a request from the complainant.

The primary aim of punishment is to protect the rights and legal interests of victims and society while ensuring the offender's rehabilitation. This objective remains relevant throughout the trial process. The execution phase completes and actualizes the efforts of all other participants in the judicial proceedings. From this perspective, the court's ruling is issued with the intent of being enforced; otherwise, it would lose its purpose. The absence or ineffective execution of a sentence nullifies the entire process of prosecution and trial (Perlov, 1963).

Additionally, Islamic jurisprudential sources have long emphasized that the purpose of discretionary punishments (*ta'zir*), which constitute a significant portion of penal reactions, is discipline and deterrence. Achieving this purpose requires the

direct involvement of a judge in the execution process to ensure its fulfillment. Therefore, the overarching goal of *ta'zir* execution supports the judicial nature of its enforcement. In other words, judicial oversight must continue throughout the execution phase to realize the rehabilitative and disciplinary objectives of discretionary punishments.

3.3.2. *Application of the Formal Criterion to the Execution of Punishment*

Currently, criminal sentence execution takes place within the prosecution office as a judicial institution, under the supervision of the sentencing enforcement judge and ultimately overseen by the prosecutor as a judicial authority. According to this criterion, sentence execution possesses a judicial nature, affirming the judicial classification of the execution process.

The organizational criterion, as a subset of the formal criterion, largely addresses the challenges associated with defining judicial acts. It encompasses all criteria necessary to classify an act as judicial. However, it still lacks definitive precision. A notable limitation of this definition concerns the decision-making process in execution proceedings. Despite being concentrated within the judiciary, execution decisions do not follow a specific judicial format and are not subject to appeal.

3.3.3. *Determining the Nature of Execution Based on the Type of Punitive Response*

Although modern responses to criminal offenses have moved beyond purely punitive measures, and administrative sanctions have increasingly entered the domain of criminal law—leading some scholars to argue for the term "enforcement of criminal rulings" instead of "execution of criminal sentences" (Tahmasbi, 2024)—the predominant sanction in criminal sentence execution remains imprisonment.

In addition to imprisonment, capital punishment and corporal penalties such as flogging, due to their direct implications for fundamental human rights, necessitate the recognition of their judicial nature. Even in the execution of penalties that exhibit fewer overt judicial characteristics, judicial oversight remains essential because their enforcement is directly linked to the performance of the judiciary.

4. Preferred Theory: The Prevalence of the Judicial Approach Over the Administrative Approach

Based on the discussions above, no single criterion can precisely and definitively distinguish judicial acts from administrative acts, nor can it decisively determine the nature of criminal sentence execution. Just as not all actions performed within administrative or judicial institutions inherently possess an administrative or judicial nature, dispute resolution is not exclusively confined to the judiciary, as administrative courts also handle dispute resolution in many cases. The objective of administrative actions, in certain instances, is to maintain public order and achieve social justice—objectives that are also pursued through judicial acts. Even elements of rehabilitation and correction can be found in certain administrative sanctions.

The response to crime has long since moved beyond purely exclusionary, punitive, or even rehabilitative measures, and some administrative sanctions—such as disqualification and the closure of institutions—have entered the arsenal of penal responses. The purpose of some sanctions, particularly alternatives to imprisonment, is to provide public services, which is traditionally a function of administrative acts. Consequently, the execution of these responses often does not require special judicial procedures.

However, it appears that both legislation and judicial practice have laid the groundwork for recognizing the execution of sentences as a judicial phase. The presence of specialized actors—including enforcement judges, social workers, enforcement officers, judicial record institutions, probation services, and, most importantly, the Criminal Sentence Execution Division—along with specific execution regulations and procedural guidelines, as well as the granting of certain discretionary powers to enforcement judges through executive orders, all serve as fundamental indicators for recognizing execution as an independent judicial phase. Sentence execution constitutes a distinct phase, possessing all the essential features of judicial proceedings. This is why the term "executive adjudication" can be used to describe it, emphasizing that execution is integral to ensuring fair trial rights for the parties involved. Accordingly, the implementation of court decisions is inseparable from the adjudication process.

Pursuant to Article 157 of the Constitution, legislative bills concerning the administrative, financial, and executive affairs of the judiciary are drafted by the Chief Justice of the Judiciary due to their indirect impact on judicial operations. Following this logic, criminal sentence execution directly affects judicial performance, as prolonged execution or failure to enforce a judgment undermines the very rationale of the judicial process and nullifies its purpose. The essence of a trial is execution—dispute resolution is not accomplished merely by issuing a judgment; rather, execution gives meaning to the concept of dispute resolution. Thus, execution remains within the judiciary not merely because it constitutes an administrative function of the judiciary, nor solely to preserve the judiciary's independence, but because execution is an intrinsic function of the judiciary and is embedded within the concept of dispute resolution.

From a philosophical perspective, the inquiry into the rationale behind punishment signifies that the enforcement of sentences is central to criminal proceedings. In other words, at least in criminal matters, execution is an integral part of adjudication. In criminal proceedings, which concern public order, merely establishing guilt and issuing a conviction is insufficient—execution of the sentence is what fulfills the objective of criminal adjudication.

The fulfillment of retributive justice, victim satisfaction, and proportional punishment can only be achieved through the actual imposition of penalties. Since the inception of criminal law, the issuance of a death sentence has never satisfied the desire for retribution in homicide cases; it is the execution of the sentence that fulfills this need. Execution is the manifestation of retributive justice. Likewise, in the realm of *diyya* (blood money), restorative justice and compensation for the victim are primary goals of sentence execution. The issuance of a compensation order alone does not bring solace to the victim; rather, the actual payment of compensation—whether monetary or in the form of an apology—fulfills this objective.

This is why the public often perceives legal mechanisms such as suspended sentences and parole as lacking true adjudication and resolution, as no sentence has been enforced or has been enforced only partially. In summary, sentence execution is an inseparable part of adjudication and judgment. This is precisely why, unlike civil cases, the enforcement of criminal sentences—even in cases subject to private prosecution—does not require the victim's consent. Once a criminal judgment is issued and finalized, the sentencing judge orders its execution. Upon receiving the case in the execution department, the enforcement judge, without requiring a separate request for execution, issues the necessary orders tailored to each case. Enforcement measures concerning bail, the detention of the convict, and the seizure of assets are directly carried out by the criminal enforcement judge.

Additionally, classifying criminal sentence execution as an administrative act and transferring its enforcement to an entity outside the judiciary presents several challenges, which can be briefly outlined as follows:

If sentence execution is regarded as the culmination of judicial performance, it is not an exaggeration to state that the credibility and very existence of the judiciary depend on the precise, accurate, and goal-oriented execution of sentences. If sentences are not enforced, the judiciary becomes meaningless. Transferring execution to the executive branch—particularly in a country where the administrative system is vast and where most offenses are committed within executive agencies—would effectively mean that many judgments remain unenforced or are only partially executed.

Moreover, concluding judicial proceedings with the issuance of a judgment and relinquishing control over the execution process by assigning it to the private sector or even the executive branch would lead to arbitrary enforcement and non-execution of rulings. Such an outcome would ultimately result in legal nihilism and public skepticism toward the legal system.

Another critical issue is the decision-making process in sentence execution. The absence of a clear judicial framework for decision-making in execution is among the key challenges related to its nature, leading some to argue for its classification as an administrative function. Except for limited cases where a ruling on the suspension of sentence execution is issued, the enforcement judge does not render formal judicial decisions. However, this cannot justify classifying execution as an administrative function.

If execution were deemed an administrative act, it would necessarily fall under the jurisdiction of the Administrative Justice Court, making execution-related decisions subject to annulment by this court. However, according to Articles 10 and 12 of the Law on the Structure of the Administrative Justice Court, only decisions made by the executive branch can be annulled by this court. Article 10, Note 2, explicitly states:

"Decisions and rulings of judicial courts and other judicial bodies, including military courts and judicial disciplinary courts, are not subject to appeal before the Administrative Justice Court."

Similarly, Article 12, Note 1, provides:

"Judicial decisions and regulations, directives, and instructions issued by the Chief Justice of the Judiciary are excluded from the scope of this article."

If the actions of enforcement judges were predominantly administrative rather than judicial, then their decisions should be appealable before the Administrative Justice Court. However, these decisions are not subject to review by this court. Notably, Article 12, Note 2, of the aforementioned law distinguishes between *decisions* and *rulings*, referring separately to "decisions" and "rulings of courts and other judicial bodies." In legislative drafting, the use of two distinct terms in the same text indicates the legislature's intent to convey different meanings. Thus, "decisions" in this context refer to judicial opinions that do not take the form of formal rulings, whereas "rulings" align with Article 299 of the Code of Civil Procedure, which defines formal judicial decisions and orders.

Given this interpretation, the decisions of enforcement judges, even if not labeled as "rulings," are not subject to appeal before the Administrative Justice Court. Instead, these decisions may be reviewed through the disciplinary prosecution of judges or by higher courts. Consequently, the inability of the Administrative Justice Court to oversee execution-related actions negates the assumption that execution is an administrative function.

5. Consequences of Recognizing the Judicial Nature of Criminal Sentence Execution

Accepting the predominance of the judicial nature of criminal sentence execution entails several legal consequences, which will be examined below.

5.1. Presence of a Judge in the Execution Process

Recognizing sentence execution as a judicial function necessitates the involvement of a qualified judge, as the concept of judicialization inherently requires the application of judicial expertise, experience, and knowledge (Mo'azenzadegan & Jahani, 2020, p. 182). Therefore, one of the most significant implications of the judicial nature of criminal sentence execution is the presence of a judge in the execution process.

The involvement of a judge in execution can take various forms, which themselves warrant independent research. However, an overview of these forms will be provided here. In accordance with the Islamic legal system and the necessity of a single judge overseeing the process from the beginning to the end, one approach is that the sentencing judge is also responsible for executing the punishment. This model was experienced in Iran's legal system during the period when prosecution offices were eliminated under the Law on the Establishment of General and Revolutionary Courts.

Another approach involves the prosecutor's office, where a judicial prosecutor, under the supervision of the prosecutor general, is responsible for enforcing sentences. The final approach is the involvement of an independent judge in the execution process. This model has been formally recognized in Iran's legal system with the establishment of the sentence enforcement judge within the Criminal Sentence Execution Division. France pioneered this model in 1958.

In all these models, the actual execution of punishment may be carried out by an administrative official but under the supervision of a judicial enforcement officer. An example of this model in Iran's legal system is found in the enforcement of bail conditions by the Organization for the Management of Seized Assets.

Under the current criminal justice system, the criminal sentence enforcement judge is part of the prosecution office and operates under the supervision of the prosecutor general. The application of certain legal measures and even restrictions within this system is subject to the prosecutor's authority or approval. The enforcement judge is required to forward all cases involving leniency measures—particularly those leading to the early release of a convict—to the court that issued the original judgment and has no discretion to oppose them.

The prevailing judicial practice dictates that in cases involving leniency measures such as sentence suspension, electronic monitoring, voluntary surrender, or late objections to a judgment, the enforcement judge has no authority to object and is obligated to refer the case to the sentencing court. Some even argue that enforcement judges lack discretion to provide explanatory remarks or opinions in their referral reports.

Furthermore, in judicial practice, some enforcement judges believe that even if they oppose the suspension of sentence execution, they are nonetheless required to send the case to the sentencing court upon the convict's request. In certain cases,

enforcement judges have rejected belated objections or voluntary surrender without the presence of the convict by issuing a formal record of the rejection at the enforcement division. However, this has led to objections from supervisory authorities, who argue that accepting or rejecting such matters falls exclusively under the jurisdiction of the sentencing court and that the enforcement judge has no authority to decide on these issues. In other words, even in cases where an enforcement judge technically has the capacity to make judicial decisions, legislative provisions and judicial practices often restrict the exercise of such discretion.

Nonetheless, there are instances in which the enforcement judge does exercise judicial discretion in the execution process, as discussed below.

5.1.1. Application of Laws Favorable to the Convict

According to Article 10 of the Islamic Penal Code, criminal laws do not have retroactive effect, and their application is limited to future cases. However, if a subsequent law is enacted that decriminalizes certain conduct, reduces penalties, or otherwise benefits the accused, such a law applies retroactively. The effect of new laws on past offenses extends not only to pending cases but also to sentences currently being executed and even to those already executed.

In the context of this study, the main concern is judgments under execution or already executed when a new law is passed that benefits the convict. The ability of the enforcement authority to recognize and apply such laws is crucial. If criminal sentence execution is considered an administrative function to be carried out by purely administrative officers without judicial expertise, the implementation of these legal provisions would face significant challenges.

For example, in cases where an executed sentence is later decriminalized by a new law, and subsequent inquiries are made about the convict's criminal record, the enforcement authority must be competent in interpreting the law to provide appropriate responses and determine the applicability of recidivism rules. If a previously executed sentence is no longer considered a criminal offense under the new law, the prior conviction cannot serve as a basis for applying recidivism provisions. The same applies to determining whether a conviction is relevant for granting leniency measures.

Because enforcement judges are involved in the execution process, they are responsible for immediately reviewing the applicability of new laws to ongoing cases and taking action accordingly under Article 10(b) of the Islamic Penal Code. This duty is inherent to the judiciary and does not require a request from the convict or their attorney. The enforcement judge, on their own initiative, issues an order to discontinue execution in cases where a new law decriminalizes the offense. This order constitutes a judicial decision.

5.1.2. Issuance of Judicial Decisions

In some cases during sentence execution, the enforcement authority is compelled to issue a formal judicial ruling in the form of an order. In addition to the retroactive application of new laws, other scenarios requiring judicial orders include cases where the victim consents in private-prosecution offenses, the convict dies, the statute of limitations expires, or the convict is granted clemency. Pursuant to Article 13 of the Code of Criminal Procedure, in such cases, the enforcement judge issues an order to discontinue execution, which is a judicial decision.

5.1.3. Determination of the Sequence of Sentence Execution

When a convict is sentenced to multiple penalties, the enforcement judge must determine, based on Articles 131–134 of the Islamic Penal Code, whether the most severe sentence or a combination of sentences should be executed. Additionally, under Articles 484 and 489 of the Code of Criminal Procedure, the enforcement judge is responsible for issuing the order for execution. Logically, this responsibility necessitates judicial discretion in determining which sentence to enforce first, making it a judicial function.

Another responsibility of enforcement judges is verifying whether a judgment is final or subject to appeal, particularly in cases where the sentencing judge has mistakenly classified the judgment as final or appealable. These determinations fall under the judicial authority of the enforcement judge and would pose challenges if assigned to an administrative body.

5.1.4. *Issuance of Criminal Security Orders*

Certain leniency measures, such as granting temporary leave, employment during incarceration, or medical treatment for ill convicts, require the issuance of a criminal security order. The types of security measures are specified in Article 217 of the Code of Criminal Procedure.

One of the key principles of security orders is ensuring their proportionality with the severity of the punishment, the harm suffered by the victim, and the convict's personal circumstances. Assigning this responsibility to executive officials or even judicial officers without specialized training would constitute a judicial violation. Consequently, such orders must be issued by a judicial authority.

5.1.5. *Application of Sentence Reduction or Suspension*

Under Note 3 of Article 529 of the Code of Criminal Procedure, the sentence enforcement judge has the authority to exempt the convict from paying twenty percent of the imposed fine under specific conditions. Additionally, in certain cases, the judge may, at their discretion and in accordance with the criteria set forth in Articles 501 and 502, temporarily suspend the execution of the sentence.

5.2. *A Coherent Structure and Organization for Criminal Sentence Execution*

One of the significant consequences of recognizing the judicial nature of punishment enforcement is the necessity of a judicially structured system for execution. This requirement goes beyond the mere presence of a judge and extends to the need for a well-organized structure for criminal sentence execution. Before appointing a judge with discretionary authority, there must be an organized system in place for execution. While the presence of a sentence enforcement judge is crucial at the top of this system, an integrated execution structure also requires professionals, social workers, enforcement officers, monitoring officials, administrative personnel, and sufficient logistical resources to achieve the intended objectives of punishment—most notably, rehabilitation and reintegration. A judge without a structured system and workforce would be akin to a ruler without a kingdom.

In the 2013 law, the Criminal Sentence Execution Division was formally recognized as a necessary institution to enable the enforcement judge to exercise authority. Apart from the judge as the primary actor, this structure includes other key stakeholders whose interactions with the judge play a critical role in fulfilling the goals of punishment. Based on Article 485 of the Code of Criminal Procedure, the actors involved in the sentence execution structure include the enforcement judge, social workers, enforcement officers, and monitoring officers. Moreover, social workers operate within an established administrative framework rather than as independent actors. An organized social work division is therefore established with a defined structure and mechanisms. Additionally, mediation and judicial record units have been integrated into the sentence execution system to fulfill specific duties.

5.3. *The Necessity of Extending Fair Trial Principles to the Execution Process*

By recognizing criminal sentence execution as a judicial function and acknowledging the necessity of both structure and judicial oversight in the process, it follows that the principles of fair trial must also govern this stage. These principles include judicial independence, adversarial proceedings, human dignity, the protection of individual rights and freedoms, the right to appeal, and the inescapability of sentence execution at this stage (Lupinskaya, 2011). The legality of sentence execution—explicitly stated in Article 12 of the Code of Criminal Procedure—is one such principle that must necessarily be upheld in the execution process. However, in the current Iranian legal system, sentence execution is governed by executive regulations rather than by statute.

Another fair trial principle that should apply to execution is the right to appeal criminal judgments. However, in practice, decision-making in the execution process does not follow a structured judicial format and is often conducted through administrative records that are not subject to appeal.

6. Conclusion

Among the judiciary's functions, the execution of criminal sentences occupies a particularly ambiguous position, as it takes place after the trial process yet remains integral to it. Some theories have even proposed transferring sentence execution to the private sector, while a more moderate approach suggests renaming the Prison Organization as the Sentence Execution Organization and placing it under the executive branch.

The perception of sentence execution as an administrative function is reinforced by the fact that execution appears to fall outside the traditional concept of dispute resolution. Additionally, judicial decisions are typically issued in the form of written rulings, whereas execution is often carried out through administrative decisions. However, none of these factors negate the fundamentally judicial nature of execution.

From a formal and organizational perspective, sentence execution takes place within the prosecution office, which is an institution of the judiciary, and is conducted by the sentence enforcement judge. Substantively, the essence of judicial evaluation lies in dispute resolution, and dispute resolution is contingent upon enforcement and execution. Furthermore, most criminal justice responses to crime involve fundamental human rights, liberty, and bodily integrity. Unlike administrative acts, which primarily serve public interests by maintaining public order and delivering services—though some punitive responses may incidentally contribute to public order—criminal sentence execution primarily aims at deterrence, discipline, and rehabilitation. Therefore, it cannot be classified as an administrative function.

In other words, the nature of sentence execution is shaped by the purpose of punishment itself. This is why the enforcement phase often involves sentence modification or adjustment. Additionally, sentence execution is the tangible realization of criminal justice and has a direct impact on the effectiveness of punishment.

As a result, execution is inseparably linked to the issuance of judgments; it gives meaning to the concept of dispute resolution and is an integral part of it. Recognizing the judicial nature of sentence execution necessitates the presence of a judge, an organized execution system, and the application of fair trial principles—including legality, judicial impartiality, and procedural safeguards—throughout this phase.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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