UPDATING METHODS OF IMPLEMENTING PUNISHMENT WITH THE INTELLECTUAL TRENDS OF MODERN PENAL JURISPRUDENCE -THE DIALECTIC OF - PUNISHMENT OR REFORM?

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Abstract:

The article aims to clarify the new philosophy formulated by modern criminal jurisprudence in implementing the punishment on the offender, by transforming it into a tool for reform instead of deterrence, through its attempt to eradicate the roots of the crime and combat its return on the one hand, and on the other hand to combat the phenomenon of prison overcrowding caused by the punishment of short-term imprisonment, and the friction of prisoners among themselves and the resulting acquisition of new criminal skills, which this jurisprudential trend seeks to combat by adopting new alternatives to punishment, which would eliminate this difficult problem, which has become a concern for countries, which the Algerian legislator has followed in recent years in line with the latest scientific research revealed by the science of punishment.

Keywords: *Modern criminal jurisprudence, punishment, short-term imprisonment, penal reform, recidivism, alternatives to punishment.*

INTRODUCTION:

Algerian legislation, similar to the legislative systems of countries, strives to achieve social stability for its citizens, by adopting various criminal policies to achieve justice and reduce the criminal phenomenon, however, the inability and failure of such policies to confront the criminal phenomenon, which has become a source of insomnia, is quickly discovered due to its direct effects on the lives of individuals and societies, and its impediment to achieving sustainable development and stability as a result of the increasing number of crimes and the increasing cases of recidivism due to the development of methods of committing them, which is expected, since most of these criminal policies are based only on suspicion and probability in determining the means of combating crime, to achieve general deterrence without paying attention to the circumstances and condition of the offender.

Hence, it has become imperative for all those working in the field of law, whether they are theorists or implementers, to develop a policy of criminalization and punishment in line with the latest developments in scientific research in criminal jurisprudence, keeping pace with the rapid development of methods and means of committing crimes, which has prompted legislators in most countries to issue a significant number of legislations to adapt to the current situation.

Perhaps the most prominent of these new inputs are alternatives to custodial sentences, especially those related to short-term imprisonment, due to their negative consequences on both the offender and society, instead of reforming and reintegrating the offender into his social environment.

From this standpoint, the problem of the study revolves around the following question:

What are the reasons and motives for developing the rules of penal policy in confronting the criminal phenomenon? And how did the Algerian legislature deal with these modern trends in penal policy?

To answer this problem, we relied on the descriptive and analytical approaches, as they are the most appropriate for this type of legal study, as well as the comparative approach whenever necessary to clarify the areas of integration and difference between the texts. we divided this study into two axes: We devoted

its first section to the motives for developing the rules of penal policy in confronting the criminal phenomenon, while its second section was devoted to the position of the Algerian legislator on these modern rules of penal policy.

The first section: Motives for developing the rules of penal policy in confronting the criminal phenomenon

The punishment imposed on the offender originally aims to reform him before being a means of deterring him, to reduce the phenomenon of recidivism, but the truth clearly shows the failure of some policies and procedures applied to reducing the criminal phenomenon, which is confirmed by criminal statistics with the increasing number of crimes and the increasing cases of recidivism, which calls for the necessity of reconsidering some aspects related to penal policy and its effectiveness in achieving the rehabilitative function according to the image presented by modern criminal jurisprudence.

On this basis, we will elaborate on this topic, highlighting and explaining the real reasons that motivate and call for developing this type of punitive policies, by addressing the research of both realistic motives (the first requirement) and objective motives (the second requirement) as follows:

First requirement: Realistic motives

It means the group of causes and phenomena related to society, and affecting its stability, which require re-regulating them through the law, as their existence is an indication of the ineffectiveness of the procedures and measures taken to confront the criminal phenomenon, or which may lead to its re-emergence again, such as the problem of prison overcrowding (the first section), or the problem of recidivism (the second section), as will be mentioned in detail.

The first section: Overcrowding of prisoners in penal institutions

Penal institutions today, in some countries, are witnessing large overcrowding with large numbers of prisoners, which is shown by statistics in this regard, in light of the increasing crime rates and the multiplicity of areas that have come to affect them, which is considered one of the most important problems that those in charge of these public facilities have come to suffer from, and its impact on the process of reform and rehabilitation, whether in terms of meeting management requirements or in terms of achieving the basic objectives of punishment, which has deviated these institutions from their general intended purpose, and transformed them into schools for criminal training as a result of the mixing of novice criminals with professional criminals, to produce what is more dangerous and more severe on public security, and leads to the nullification of the effect of punishment in terms of deterrence and reform.

The second section: The high rate of recidivism

The phenomenon of repeating a crime by the same offender is a serious matter that indicates the inability of the penal system to deter and reform the offender, as the recidivist criminal is considered from a legal standpoint "a person who has previously been sentenced with a final judgment for a crime, and has served his sentence, and then returned to commit another crime according to the conditions specified by law"[1], and this is due to several factors, some of which are internal (such as heredity, gender, cultural level, etc.), and some of which are external (such as family disintegration, economic factors, etc…). However, the phenomenon of recidivism confirms and demonstrates, beyond any doubt, the failure of punishment to deter and reform the offender, which calls for reconsideration of it as ineffective, and of the group of other factors surrounding it, whether psychological or economic, which led to the denial of human values from the offenders, and raised in them the idea of revenge within society, to push those released once again to return to crime.

The second requirement: the objective motives

The evaluation processes conducted by specialists in criminal justice affairs[2] reveal that the latter is experiencing distress and a crisis in confronting the phenomenon of crime, as a result of several reasons, the

most prominent of which is the problem of slow justice or judicial congestion (the first branch), followed in second place by the problem of short-term imprisonment (the second branch), which we will explain through the following:

The first branch: The problem of slow justice or judicial congestion

The number of cases referred to the judicial authorities for adjudication is increasing, which burdens the prosecution and courts, and results in a crisis of file accumulation due to the time needed to process them, which has produced several dangerous results on achieving justice, which are likely to prevent reaching a reduction in crime, as researchs[3] indicates that the most important reasons for this are primarily due to the procedural system, and the formalities and complexities that surround it that hinder the process of adjudicating cases in an appropriate manner, in addition to the great pressure on the judiciary, which often leads to the liquidation of a large number of these cases improvised, whether by the public prosecution judges through archiving, or by the judges themselves When the number of cases exceeds the reasonable limit, by ruling on them without sufficient study, by imposing penalties that are not commensurate with the social, economic and political changes that society knows, which allows some criminals to escape punishment, and leads to the judiciary losing its role in confronting crime.

The second section: The problem of short-term imprisonment

Despite the lack of agreement on determining the period in which this penalty is considered a short-term imprisonment[4] penalty among jurists of penal policy, they agree that it is one of the most important problems that the penal system suffers from, as a result of its negative effects, most notably the failure to achieve the goal of reform and rehabilitation programs, where it must be emphasized here that even if this type of punishment is important in achieving general deterrence among a group of people for fear of going to prison for some crimes that do not represent a great danger to society, such as crimes based on recklessness and negligence, so that this punishment is a warning to them[5], the resulting damages may far exceed the positives of its application, as some specialists in modern penal policy[6] say, which include, for example, the failure to achieve general deterrence due to underestimating its duration and not allowing the implementation of reform and rehabilitation programs on convicts, therefore, the latter is considered one of the most important factors that contribute to the criminal formation of those sentenced to this penalty as a result of their mixing with criminals, and its contribution as well to prison overcrowding due to the large numbers of perpetrators of this type of non-serious acts, which is reflected in the increase in financial burdens on the state budget, which led to the rise of the voices of specialists[7] calling for the need to reconsider this penalty, either by canceling it or replacing it with financial penalties that are more appropriate to reality and more in line with the idea of general deterrence.

The second section: The position of the Algerian legislator on the modern trends of penal policy

The Algerian legislator took an important step, although it was not sufficient on its own, to draw up penal policy in the last twenty years, when it proceeded to add new alternatives to the penalty of short-term imprisonment, in line with the contemporary criminal policy aimed at reforming the criminal and reintegrating him socially[8], instead of being a means of deterrence, through amending both the Penal Code (the first requirement), and the Code of Criminal Procedure (the second requirement), which we will present a model of in each of their legislation.

First requirement: The model in the Penal Code

Thanks to the development of the concept of the function of punishment and its transformation from a tool for general deterrence to a means of reform and social reintegration in light of the contemporary penal policy, the competent judicial authorities began to be keen to avoid using the penalty of short-term imprisonment and depriving the offender of his freedom, after the Algerian legislator proceeded to include the penalty of public benefit work in the Penal Code[9], the latter of which we will define its nature and the conditions for benefiting from it (the first section), to later turn to clarify the objectives to be determined (the second section), as follows:

Section One: The concept of the penalty of public benefit work, and the conditions for benefiting from it

The Algerian legislator stipulated this penalty in Articles 5 bis 01 to 5 bis 06 of the Penal Code pursuant to the 2009 amendment[10], as an attempt by the Algerian legislator to adapt the criminal policy to the development of comparative criminal law, where the latter is applied by the competent judicial authorities to the natural person sentenced to a short-term imprisonment sentence to avoid depriving him of his freedom and the negative effects that may result from it[11], by performing work for the public benefit without pay.

In this regard, contemporary criminal jurisprudence defines this penalty as "obligating the convict to perform a specific work without compensation for the benefit of society during specific times specified by the ruling, to avoid the penalty of short-term imprisonment, according to conditions specified by law".These [12] conditions were clarified in both Articles 05 bis 01 and 05 bis 02, and Ministerial Circular No. 02 dated April 21, 2009 explained the methods for their implementation, which can be summarized as follows:

- First. Conditions related to the convict:

1- The offender must not have a criminal record.

2- He must be at least 16 years old when committing the criminal acts.

3- The convict must agree to this penalty.

- Second. Conditions related to the penalty:

1- The penalty prescribed by law for the crime must not exceed (03) years in prison.

2- The sentence pronounced must not exceed (01) years in prison.

3- The work period must range from 40 to 600 hours for adults, and from 20 to 300 hours for minors, taking into account their legal status in the Labor Law, which allows their employment if they are not less than 16 years old in some professions and jobs.[13]

Third. Conditions related to the ruling:

1- The original penalty must be mentioned in the ruling.

2- The ruling must mention replacing the prison sentence with a sentence of public service work.

3- It should indicate the presence of the accused in the session, and it should be noted that he is informed of his right to accept or reject the penalty of public service work. 4- It should indicate that the convicted person is warned of the application of the original penalty if he fails to fulfill the obligations resulting from this penalty.

Section Two: Objectives of Public Benefit Work Punishment

The use of this type of punishment achieves several purposes, which we can define as follows:

-First. Disciplinary purposes: This punishment enhances the process of the convict's participation in public burdens, and his contribution to improving the internal state of society, because doing this work within state institutions makes it a kind of compensation for the harm caused by the convict to society and its stability on the one hand, and on the other hand, this punishment will play a positive role in reducing prison overcrowding with inmates, which contributes to supporting and activating their roles in reform, rehabilitation and social integration, which makes the punishment of public benefit work more humane in facilitating the return of the offender to the bosom of his society, than if it was limited only to entering the walls of closed penal institutions.

- Second: Economic purposes: The implementation of this penalty will result in providing a large financial return to the state treasury, which would not have been achieved if these convicts were thrown into penal institutions, and the resulting expenses to cover their daily expenses resulting from their care and rehabilitation, as this alternative penalty will enable the state treasury to avoid additional burdens such as food, clothing, treatment, rehabilitation expenses, insurance, etc., on the one hand, and in return, it will

enable state institutions, administrations and public bodies to gain workers and benefit from them in implementing and achieving their planned development programs, without increasing their financial appropriations, which constitutes an added value for society.

- Third: Social and psychological purposes: This penalty aims primarily to avoid the alienation of the convict from society, as it provides the possibility for the latter to remain connected to his social environment, especially for novice criminals, which helps in the process of reform, rehabilitation, and integration, which is considered one of the foundations of the modern social defense movement[14], and this punishment also helps in avoiding the negative view of the convict and his contempt by society, which pushes him to return to crime and enter an endless cycle of problems.

The second requirement: The model in the Code of Criminal Procedure

Under the amendment introduced by the Algerian legislator in the Code of Criminal Procedure in 2004[15], the legislator adopted the system of partial suspension of the original penalty, whether imprisonment or a fine, after it had only known the simple suspension of execution system, as it is often entrenched in the judge's belief while considering the cases presented to him that the criminal before him committed his crime by chance or as a result of his impulse, and his return to committing a new crime in the future is unlikely, so he sees that it is wise not to imprison him for a short period, due to the damages that may result from the penalty, so he issues his ruling followed by an order to suspend the execution of the penalty for a specific period, so that if it expires without anything happening that requires canceling its suspension legally, the ruling is considered as if it did not happen, and it is removed from his criminal record[16], this new penal system, the nature of which we will define and the conditions for benefiting from it in the first section, and we will clarify its objectives that the legislator intended behind its consecration in the second section.

The first section: The concept of the system of suspending the execution of the penalty and the conditions for benefiting from it

Contemporary criminal jurisprudence defines the system of suspending the execution of the penalty with several definitions, including that it is: "The system that restricts the freedom of the convict instead of depriving it as a means of reforming him, by issuing a conviction ruling with the suspension of the execution of the penalty under probation, to implement the conditions and obligations imposed by the court on him during a specific period".[17]

It is also known as: "The system that aims to threaten the criminal with the sentence issued by the penalty, by granting the judge the authority to suspend the execution of the sentence he issued for a certain period, to serve as a trial period, during which the convict is required not to return to committing a new crime, if he wants to escape the sentence imposed on him permanently, and to consider the sentence as if it did not exist, otherwise it will be executed in addition to what will be ruled on him for the new crime", which is [18] what the Algerian legislator adopted in Articles 592 to 595 of the Code of Criminal Procedure, and applied it to both imprisonment and fines alike, as it is a system limited to a specific type of punishment[19], and it is imposed on a special category of criminals, as the punishment is short-term imprisonment, and as for the criminals, they are those who do not have a criminal danger.

There are a number of conditions for suspending the execution of a penalty, which the court verifies before ordering the suspension of execution, and which can be summarized as follows[20]:

- First. Formal conditions: These can be summarized as follows:

1- The necessity of the judge's ruling to suspend the execution of the penalty: The Algerian legislator explicitly stipulated in Article 592 of the Penal Code that the rulings issued to suspend the execution of the penalty must be justified, because the rulings must be enforced, and their suspension is only an exception. Therefore, the reasons that prompted the judge to order the suspension of the execution of his ruling must be stated, otherwise, it would be flawed and would result in annulment, noting that this order is optional for the judge, even if the defendant's defense party requests it, and without stating the reason for the rejection if the submitted request is not accepted and the original penalty is ordered to be executed[21].

2- The necessity of warning the convict by the judge: This is according to the requirements of Article 594 of the Penal Code, which requires warning the convict as an essential procedure that results in the annulment of the judgment that does not include it, because the convict must be informed and reminded by the judge after the pronouncement of the judgment that the execution of the penalty against him has been suspended[22], and not exempted from it, as a procedure that serves his interest, provided that he does not commit a new crime during the specified period, otherwise the judicial rulings for both crimes will be executed against him.

- Second. Subject conditions: These can be summarized as follows:

1- Conditions related to the offender: The application of the suspension of punishment system is based primarily on the judge's assessment of the offender's personality, as it becomes clear to him that the convict does not show a criminal danger that requires his placement in the penal institution for rehabilitation, and that sentencing him according to the suspension of punishment system is sufficient to deter him without having negative effects on the latter in the future. Accordingly, Article 592 of the Penal Code prohibits the judge from deciding to suspend the execution of the sentence he ruled for the offender if he has a previous criminal record for a felony or misdemeanor, which indicates that this system is originally established for first-time offenders who do not show a criminal danger that makes them untrustworthy.

2- Conditions related to the crime: International penal legislations differed in their vision of the system of suspending the execution of the penalty, as some limited it only to felonies and misdemeanors without violations, considering that the latter does not appear in the criminal record and therefore it is not possible to know whether the committed violation constitutes a precedent or not, while others limit it to a fine without an imprisonment sentence, unlike the vision of the Algerian legislator who decided on both imprisonment and fine without other penalties.

3- Conditions related to the penalty: Since the purpose behind establishing the system of suspending the execution of the penalty is to avoid the negative consequences of short-term imprisonment, it is obvious that the scope of its application is limited to the limits of imprisonment and fine penalties, which is the position adopted by the Algerian legislator who required that the original penalty that can be suspended is imprisonment or a fine - one or both or part of them - regardless of the type of crime that corresponds to them[23], which implicitly indicates that if the penalty is more severe than imprisonment, it cannot be suspended.

The second section: The objectives of the system of suspending the execution of the penalty

Theorists and jurists of penal policy believe that the wisdom of establishing a system for suspending the execution of the penalty is the interest of the offender, represented in facilitating the process of his reform and social reintegration[24], as it allows avoiding the implementation of a short-term custodial sentence in closed penal institutions, and the disadvantages that may result from the mixing of novice offenders with professional criminals, which makes these institutions schools for training and exchanging experiences in this field of crime on the one hand[25], and on the other hand this system plays a preventive role in not destroying the material and moral self of the convict, and his feeling of loss of respect, which puts him in a state of internal and societal alienation, which pushes him further towards charging his negative thoughts, which increases his aggression towards society.

It is worth noting that the system of suspending the execution of punishment, like other contemporary alternative penal systems, contributes effectively to avoiding the phenomenon of prison overcrowding, and the negative effects that follow on the quality of reform and social integration, and also contributes to reducing the financial costs on the public treasury, as a result of the various care expenses that the state provides to these prisoners.

CONCLUSION:

The great development witnessed by penal thought has led to a change in the traditional view of punishment, from being a mere means of retribution against the offender to achieve general deterrence to considering it a tool for reforming, rehabilitating, and socially integrating the offender, however, the matter is not as easy as it seems, as this contemporary philosophy of the concept of punishment and its

implementation mechanisms is fraught with great difficulties, foremost among which is the problem of short-term custodial sentences (imprisonment), and the negative effects that result from them, as revealed by criminal research and studies, which deviate from achieving their goals, which prompted theorists and jurists of this thought to search for new and innovative alternatives, away from the walls of penal institutions, but with better and better results for both offenders and society alike, to avoid its negatives such as prison overcrowding and the high costs of running this type of penal facilities, in addition to the state of destroying the physical and moral self of the convicts, which makes them feel psychologically alienated and increases their aggression, as well as their criminal tendency towards society.

This modern penal policy that the Algerian legislator tried to follow by formulating amendments to both the Penal Code and the Code of Criminal Procedure, and by creating a set of new mechanisms and systems to limit the criminal phenomenon and the possibility of recidivism, such as the public benefit work penalty system, and the suspension of sentence execution system - which we have discussed in detail in this article - or other contemporary systems, such as the semi-freedom system, the conditional release system, the external workshops system, the electronic monitoring system.....and others. However, the practical reality still reveals - despite these efforts made by the Algerian legislator to update the penal policy - the phenomenon of "recidivism", which indicates many shortcomings that mar this process as a whole, which requires reconsidering its mechanisms according to the social, economic and political variables that the country experiences in each period, by involving all specialists and experts in this field, while always ensuring an attempt to draw inspiration from comparative law and successful international experiences.

Accordingly, and based on the results reached, we propose some recommendations that we believe may provide added value to this practical and sensitive topic, which we summarize as follows:

1- The necessity of balancing between the criminal act and its seriousness, and the penalty prescribed for it during the enactment of legal texts, to avoid any harmful effects that may result from it for the offender and society in the future.

2- Lifting the criminalization of some minor crimes, would reduce the resort to short-term custodial penalties (imprisonment).

3- Innovating and formulating new mechanisms - in their financial aspect - to implement penalties outside the walls of penal institutions.

4- Involving research centers, university professors and specialists in the penal field, while developing penal policies, to achieve the best results on the ground.

5- Drawing inspiration from comparative law and successful international experiences.

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