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TOWARDS A MODEL FOR ALTERNATIVE PUNISHMENTS IN THE PALESTINIAN CRIMINAL JUSTICE SYSTEM IN THE LIGHT OF INTERNATIONAL EXPERIENCES

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ABSTRACT

This study aimed to identify a model of alternative punishments in the Palestinian criminal justice system in the light of international experiences, by identifying the nature of community surveillance, house arrest, quasi-freedom system, division of punishment, and postponement of the pronouncement of punishment, the researcher has used in his study the analytical approach and the comparative approach in order to reach a model of alternative punishments in the Palestinian criminal justice system in the light of international experiences, and the study has found the possibility of developing this model for alternative punishments in the Palestinian criminal justice system, Accordingly, the study recommended the need for the Palestinian legislator to adopt the model of alternative penalties in the Palestinian criminal justice system by adding these forms to the Jordanian Penal Code No. 16 of 1960, which is applied in the West Bank, or singling out legislation for alternative penalties.

Keywords: Alternative punishments, criminal justice system, international experiences, model.

Introduction

Writers and researchers did not agree on a comprehensive and unified definition of alternative punishments, the reason may be the novelty of the subject or the difference of each environment from the other, as well as how to apply them and the different systems, and even the names are different, there are those who call them alternatives to prisons, public benefit penalties and alternative penalties to the custodial penalty, but it can be defined as A system that allows the substitution of a penalty of one type in place of a penalty of another type judicially, whether the substitution is made within or after the conviction, and this is done when the original sentence cannot be carried out, or there is a possibility that it cannot be executed, or if the alternative punishment is more appropriate in terms of execution compared to the sentence initially imposed in view of the case of the accused, as it has been defined as a set of measures that replace imprisonment to reform the offender and protect the group, or to verify the accused and detect (Jalal, 2005). On the other hand, it was defined as taking alternative measures to imprisonment that include a set of measures taken by society to punish violators of its laws in

order to reform them and apply punishment to them without implementing them within specific places that make them isolated from society (Bahri, 2011), and can also be defined as a complete or partial alternative to custodial penalties. The perpetrator is subjected to a set of obligations, which are not intended to hurt the convict, but rather to rehabilitate and reintegrate socially, thus achieving punitive purposes required by the interest of society (Bounahla, 2012).

Prisons are also found in all countries of the world; therefore, policymakers and administrators may take them for granted and not actively try to find alternatives to them, however, imprisonment should not be taken for granted as a natural form of punishment, in many countries, the use of imprisonment as a form of punishment is relatively recent, and this may be alien to local cultural traditions that have relied for thousands of years on alternative ways of dealing with crime. to counterproductive results in the rehabilitation and reintegration of those accused of minor crimes, as well as for some vulnerable populations, however, in practice, the general use of imprisonment is on the rise around the world, while there is little evidence that its increased use improves public safety and security, as there are more than nine million prisoners worldwide and this number is increasing, the fact is that the increasing numbers of prisoners lead to This has often led to prison conditions that violate UN and other standards requiring that all prisoners be treated with respect because of their inherent dignity and value as human beings (Walmsley, 2005).

Study problem

Modern criminal policies in most countries of the world have tended to adopt the system of alternative punishments and the United Nations has been holding many conferences on crime prevention and treatment of its causes since the beginning of its establishment and many studies and research have been conducted around the world for half a century, and international conferences have had an impact on criminal justice policies and in national and professional procedures and practices around the world, and at a time when Many contemporary problems, including crime, have a global dimension, these conferences have become of particular importance, which made international cooperation an urgent priority, and the efforts of the United Nations to develop international guidelines for criminal justice did not come from a vacuum, since 1872 the International Prison Commission - which later became the International Commission on Punishment and Correction - was established during an international conference to make recommendations for prison reform. (Al-Jawari, 2009), and therefore the problem of the study lies in trying to identify alternative forms of punishment in the criminal justice system that can be applied in the light of international experiences.

Study Questions

This study attempted to answer the following questions:

- What is community surveillance as a form of alternative punishment in the criminal justice system?
- What is house arrest as an alternative form of punishment in the criminal justice system?
- What is quasi-liberty as a form of alternative punishment in the criminal justice system?
- What is the division of punishment as a form of alternative punishment in the criminal justice system?
- What is the deferral of sentencing as a form of alternative punishment in the criminal justice system?

The importance of the study

The importance of the study in theory lies in the fact that this study is one of the few studies that dealt with alternative punishments and a model for their application in the Palestinian criminal justice system, most of the previous studies focused on traditional alternative penalties

applied in accordance with the Jordanian Penal Code No. 16 of 1960, while the forms that we address in this study were not addressed by Palestinian legislation, and therefore this study will constitute an addition to the legal library in this field, and in addition to other researchers, and the importance of the study lies in theory as it It will help specialists and legislative policy makers, especially the Palestinian legislator, by adopting this model of alternative punishments, by amending the Penal Code No. 16 of 1960 by adding it, or by singling out legislation for alternative penalties.

Objectives of the study

This study attempted to achieve the following objectives:

- Identify what community surveillance is as a form of alternative punishment in the criminal justice system.
- Identify house arrest as a form of alternative punishment in the criminal justice system.
- Explain the quasi-freedom system as a form of alternative punishment in the criminal justice system.
- Clarify what constitutes the division of punishment as a form of alternative punishment in the criminal justice system.
- Discuss the nature of postponing sentencing as a form of alternative punishment in the criminal justice system.

Study Methodology

In this study, the researcher used the analytical approach based on the analysis of all experiences related to alternative punishments in the criminal justice system, whether with regard to legislation or jurisprudence of jurists, in order to reach a model for alternative punishments in the Palestinian criminal justice system, and the researcher also used the comparative approach by identifying the forms of alternative punishments in comparative legislation such as Jordanian, Bahraini, Kuwaiti, German and Belgian.

Section I

Community Monitoring

Jordan recently used this alternative punishment, as the Jordanian legislator defined it in the Jordanian Penal Code, as amended in 2022 in Article 25 bis ter, as obliging the convicted person to undergo rehabilitation programs determined by the court aimed at correcting and improving the behavior of the convict.

The same article also sets out the provisions for the application of community surveillance as an alternative to short-term detention, as follows:

- The punishable crime must be of the type of misdemeanors or felonies committed against non-persons, and the penalty was imposed for one year after using mitigating reasons.
- Issue a report on the social status of the convict.
- Community control shall be issued by the court.
- The judge executing the sentence shall carry out the community control.
- The judge of execution of the sentence shall have the authority to replace any of the alternatives sentenced with other alternatives provided for in Article (25 bis) or to reduce or increase the duration of the substitute sentenced within the limits prescribed for the same substitute in the following cases, 1) Based on the report of the social status and periodic follow-up reports of the convict, 2) If the convicted person does not implement the alternatives to the custodial penalties or fails to implement them for a reason beyond his control and shows an acceptable excuse for that, but in other cases The judge of execution of the penalty shall refer the case file to the competent court that issued the

judgment in misdemeanours to consider canceling the substitute and sentencing the penalty of deprivation of liberty prescribed by law for the crime or to the court that issued the judgment in felonies to consider the execution of the judgment, and in all cases the period spent by the convicted person in executing the substitute shall be calculated at five hours for each day of detention.

Regulation No. 46 of 2022 of Jordan, on the means and mechanisms for implementing alternatives to custodial sentences, specified the authority to follow up the implementation of these alternatives in a directorate affiliated to the Ministry of Justice, which supervises the implementation of alternatives with all competent authorities, submits periodic follow-up reports on the extent of the convict's commitment to implementing the alternative punishment to the competent judge, coordinating with partners in proposing rehabilitation programs within the accredited body, and providing the courts with an updated and periodic list of the accredited bodies to implement these alternatives.The Ministry of Justice, through the competent directorate supervising those sentenced to these alternatives, conducts periodic monitoring visits to them in the places of execution of the sentence that have been chosen, and prepares the final report that includes the completion of the execution of the sentence and submits it to the competent judge who is responsible for ending the case.

The Bahraini legislator referred to community monitoring, but with another name, which is attending rehabilitation and training programs, as he defined it as obliging the convicted person to undergo one or more rehabilitation and training programs in the medical, psychological, social, educational, craft or industrial fields to correct his behavior.

Section II

House arrest

House arrest is defined as a judicial ruling according to which a person's freedom is restricted, by obliging him to reside in a specific place that he does not leave, and the place is often private to the same person as his usual residence or any other place he owns or rents, but it may be a place imposed by the authority that decides to place him under house arrest taking into account considerations of public interest or the safety of the person whose residence in this place has been determined (Bellish, 2017).

The content of house arrest is to restrict a person's freedom to travel, move or leave the place where he is obligated to reside, he may not travel outside or within the country, and he may not leave his place of house arrest except with special permission to receive treatment or undergo surgery that is necessary to save his life, for example, and he may not communicate with people outside his place of residence except to the extent permitted by the competent authorities, However, there is nothing that prevents the person who is determined by his residence from communicating with his family and relatives, and allowing him to receive some of his visitors, and he has the right to request the residence of a member of his family with him in the place specified for his house arrest, in which case the authorized person is bound by the same obligations as the person specified in his residence (Al-Zini, 2013).

These exceptions are determined when the penalty is imposed, and they are applied decisively and strictly, and the person subject to the penalty is subject to surveillance throughout the period of house arrest, and some countries rely on electronic monitoring that is by placing a small device on the foot of the offender, and this device determines the places and times of his presence or absence, whether he is at home or outside, as The primary objective of house arrest is to impose a punishment that is

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reasonable in its severity, in addition to maintaining public security, while reducing the person's contact with perpetrators in prisons, thus reducing the criminal impact that is expected to occur, while providing an alternative to imprisonment that reduces the cost to the state (Bellish, 2017).

The period of house arrest may also extend to include the full duration of the sentence, or limited to part of it, and for example, some countries apply house arrest in 3 stages:

- Detention of the accused person for a period of time.
- Allow him to participate in work programs.
- Confinement inside the house.

In general, house arrest is one of the reasonable penalties imposed on some defendants whose degree of danger to public peace is low, and by which the competent authorities ensure that they will not merge with higher-risk criminals and learn from them new methods of committing crimes, and house arrest may be used as a form of early release of the accused, and reintegrate them into society again, which greatly reduces the severity of overcrowding inside prisons, as well as helping perpetrators to cope once. Other with society and the requirements of life (Al-Zini, 2013).

The only thing that may cause concern about house arrest is the cost, because there are some countries that allocate a full budget to buy tracking devices, or monitor criminals during their stay, and one of the disadvantages of this punishment is that it requires setting certain conditions to identify the perpetrators that may be applied to them, and that not all criminals must be subjected to this punishment, but certain types of them, and the possible results that may accrue to society as a result of the implementation of these programs must be studied, because they may be suitable for application in Some countries while not paying off in others.

We believe that the reasons for the decline in the prevalence of house arrest as one of the alternative punishments in criminal justice systems are due to the following reasons:

- Technological development that led to the emergence of alternatives similar in content in terms of restricting the freedom of the convict, especially electronic surveillance.
- The application of house arrest has been linked to political opponents, and has not been significantly linked to criminal offenders.
- Statistical studies have not proven that house arrest contributed to the reform and rehabilitation of convicts.
- House arrest is expensive, especially if a person is appointed to monitor the extent of the convict's commitment to house arrest or not, which led to the emergence of an alternative to monitoring, which is the presence of the convict twice daily to the security center to prove his presence in the area specified for him.

Section III

Semi-Freedom System

In the period of World War II, modern criminal policy tended towards alternatives to the penalty of short-term imprisonment, and among these systems is the semi-freedom system, which is based on working in a natural environment and an atmosphere of mutual trust with those in charge of managing correction and rehabilitation centers, and the semi-freedom system was applied during World War II in France, and entered the French Henna Procedures Code in 1958, then European, American and countries of the world legislation dealt with this system in their internal laws, and Algeria has taken This system is under the name (half freedom).

First: The concept of the quasi-freedom system: The quasi-freedom system means attaching the convicted person to a short-term sentence to work outside the penal institution without

subjecting him to the control of the administration authority, while obliging him to return to the penal institution every evening and spend the holidays in it, all for the duration of the sentence, and this system is usually a gradual method used for convicts who are near the date of their release or in order to enable the convicts to pursue a certain study or a certain profession or undergo treatment Certain or participation in his family life, and with this system took the French legislator, as it allowed the application of the semi-freedom system on convicts who remained to complete their sentence for a period not exceeding one year, and the convict in this system is subject to the same conditions in which any free worker is not convicted, and therefore he is subject to a real work contract and the umbrella of social insurance, but the subject to this system does not receive his wage from the employer directly, but receives it from The prison director, provided that an amount allocated to the convict after the end of the semi-liberty period shall be deducted from this wage, and allocated to compensate the victim of the crime (civil plaintiff) not exceeding 10% (Al-Khawaldeh, 2015)

In addition to the obligation of the person subject to the quasi-liberty system to return to the penal institution after the end of the period of work abroad, there are a number of other obligations that may be imposed on him by the judge of the application of penalties, not in their entirety from the obligations that we have already referred to when talking about the system of suspension of execution with probationary placement, except for what is consistent with the nature of this system, for example, obliging the convicted person to observe the hours of exit and return determined by the judge and to observe the controls specified by Ministry of Justice on good body, dress, personal conduct, regularity in work and not to be left behind without excuse (Al-Khawaldeh, 2015).

The quasi-liberty system is a judicial procedure decided by the judges of the sentence in short-term deprivation of liberty sentences when pronouncing the sentence, or the judge of the application of penalties as a stage prior to conditional release.

Second: Advantages and difficulties of applying the quasi-freedom system: There is no doubt that the semi-freedom system guarantees the achievement of many advantages for the convict, this system avoids the convict mixing with prisoners due to his absence throughout the day, and thus it avoids the infection of crime from those who are more dangerous than him, and the system guarantees the convict not to be separated from his natural environment, it guarantees him to continue studying, following up his family and following up his professional activity, Despite these advantages, its application faces many difficulties, as it is often impossible for the beneficiary of the semi-freedom system to find suitable work due to the loss of confidence in it by employers, in addition to the fact that the convict's contact with the outside world and mixing at night after returning from work with his peers in the penal institution will help to enter prohibited items inside the prison, and this can only be confronted by separating the beneficiaries of the semi-freedom system from the rest of the inmates inside the institution. Punitive (Al-Shadhili, 2007)

Third: Abolition of the quasi-liberty system: The cancellation of the quasi-freedom system shall be by the court of first instance to which the convict resides if it is the one who decided it - based on a report by the judge of the application of penalties - in the event that the convict violates the rules and obligations imposed on him, and in this case the judge of the application of penalties may, in case of urgency, suspend the quasi-freedom system of his own accord, provided that this decision is presented to the court for consideration within five days. The director of the penal institution may, in case of urgency, issue an order to return the convict to the penal institution (Al-Shadhili, 2007).

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Section IV

Split punishment

Appeared in the modern penal policy trend calls for the use of many alternatives punitive in order to replace the penalty deprivation of liberty short duration whenever the circumstances of the crime and the personality of the criminal necessitate this, these alternatives such as the system of individualization of the legislative penalty to help the criminal judge to take it, and in fact, these alternatives are diverse and numerous and the system of installment of the penalty is one of the latest alternatives in the modern punitive policy that did not meet with much popularity, where The French Penal Code allows the judge in misdemeanours to decide to execute the imprisonment sentenced if its duration does not exceed one year, at intermittent intervals of not less than two days each, within a period not exceeding three years, if serious considerations of a professional, family, professional or social nature so require. The judge of the application of penalties, a system that is close in total to the Belgian system known as "weekend incarceration" (Abd El-Basir, 2004).

Based on this, we conclude that the conditions for the application of the system of division of punishment:

- It must be applied to offenses and misdemeanours but not to felonies if the prescribed penalty is for a period of one year at most.
- Intermittent execution of the penalty is for at least two days within a period not exceeding three years.
- In issuing this law, the criminal judge also takes into account social, professional, medical or family considerations.

The German legislator is the first to adopt this system, which was called weekend imprisonment under the order issued on 15/02/1956 on the implementation of penalties, so that the court may pronounce this partial penalty at the request of the competent authorities for application (Public Prosecution and judge of first instance) and this system applies to short-term penalties that do not exceed 14 days, as we understand from this that Germany is the first to adopt this system, then France and then Belgium. (Abd El-Basir, 2004)

It also highlights the importance of the idea of dividing the penalty as one of the means of punitive individualization that would alleviate the criticism of the penalty of short-term imprisonment and avoid the disadvantages of this system, as it can be implemented in short-term imprisonment and a fine in the field of misdemeanors and violations without felonies, similar to the French legislator in the new French Penal Code, provided that it is implemented within the fence of criminal legality in general and the legitimacy of punitive implementation with its controls in particular. The system of installment of the penalty has achieved success as an alternative to the penalty of deprivation of liberty of short duration in French legislation, this system has succeeded in the process of rehabilitation and reform of convicts and the fight against recidivism, and this is due to the multiple advantages achieved by the convict performs parts of the sentence on days when he is not linked to work tasks and family tasks, which allows the convict to resume work and affairs on the rest of the week, and the fact of the matter is that this system is very close to the system of imprisonment end The week adopted by the German and Belgian legislators, which allows the convict to carry out the sentence of imprisonment at the end of the week only, thus achieving deterrence and pain and achieving the punishment its basic function and being a way to reform and strengthen . (Abd El-Basir, 2004)

Section V

Postponing the pronouncement of punishment

For example, the Kuwaiti legislator has defined the provisions of the system of postponement of the pronouncement of punishment under the

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provisions of article 81 of Act No. 16 of 1960 promulgating the Kuwaiti Penal Code, as follows:

- The crime of which the person is accused is imprisonment.
- The morals, past, age, circumstances in which he committed his crime or the banality of this crime give rise to the belief that he will not reciprocate.
- The court shall instruct the accused to submit an undertaking of a personal, in-kind or non-bail guarantee, in which he undertakes to observe certain conditions and maintain the good conduct it specifies, provided that it does not exceed two years.
- The court may decide to place him under the supervision of a person designated by it during this period, and may change such person at his request and after notifying the accused thereof.
- If the period specified by the court expires without the accused violating the terms of the undertaking, the previous trial proceedings shall be considered null and void.
- If the accused violates the terms of the undertaking, the court shall, at the request of the indicting authority, the person in charge of his supervision or the victim, order the trial to proceed, and sentence him to the penalty for the crime he committed and the confiscation of bail, if any.

The French Penal Code also stipulates that "the judge may postpone the pronouncement of the sentence if it appears to him that the rehabilitation of the offender is possible, that repair of the damage is imminent, and that the disruption caused by the crime will stop."

In light of this, we can provide a definition of postponement of the pronouncement of the sentence, as the judge's failure to announce the sentence despite the fulfillment of all the necessary conditions, and this after the accused is declared guilty, in order to give him an opportunity to modify his behavior.

Conclusion

In this study, we have touched on a model for alternative punishments in the Palestinian criminal justice system in the light of many international experiences, and perhaps the most prominent of those forms that can be the model for the Palestinian experience are, community control, house arrest, quasi-freedom system, fragmentation of punishment, postponement of the pronouncement of punishment, and in light of that, the study reached many results, perhaps the most prominent of which is the possibility of developing a model for alternative punishments in the Palestinian criminal justice system that depends on the forms we have referred to, as alternatives to negative penalties. Therefore, the study recommended the Palestinian legislator the need to adopt this model by amending the Jordanian Penal Code No. 16 of 1960 by adding these forms, as the Jordanian legislator did, which he added by amending the Jordanian Penal Code for the year 2022, and the Kuwaiti legislator in Law No. 16 of 1960 regarding the issuance of the Kuwaiti Penal Code, or singling out special legislation for alternative penalties that addresses all forms of alternative punishments, as the Bahraini legislator did when he referred to them in Law No. 18 of 2017 on Bahraini Sanctions and Alternative Measures.

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