

COMMUNITY SERVICE WORK AS AN ALTERNATIVE PUNISHMENT IN JORDANIAN JUDICIAL SYSTEM

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ABSTRACT

The current study aimed to demonstrate the effectiveness of the punishment of work for community service in embodying the social reintegration policy of the convicts compared to the punishment of short-term imprisonment in the light of Article (25) bis of the Jordanian Penal Code No. 16 of 1960, added under the amended Law No. 27 of 2017. The study showed that Community service punishment is one of the most important alternative punishments, and it is distinguished from other alternatives in that it enhances the community's contribution to the field of criminal justice, and keeps the convict connected to the outside world so that he does not lose his work. We suggested that the judicial authorities dispense with the short-term freedom-depriving punishment, or at least try to reduce it, because it involves several disadvantages, which does not achieve deterrence, by resorting to alternative punishments whenever they contribute to reforming the deviant person, and commensurate with his condition, especially working to serve society, because this punishment achieves greater benefit in reforming the convict.

Keywords: Punishment, Community Service Work, Alternative Punishment, Freedom-Depriving Punishments.

INTRODUCTION

It is known that reform and rehabilitation centers are the place designated according to the law for the execution implement freedom-depriving punishments, whether short or long-term, and that, according to the contemporary penal policy, the main objective of punishment is special deterrence in the sense of rehabilitation and reform of the convicted person for his return as a good individual in society.

But in practice, the reform and rehabilitation centers were unable to fulfill their primary mission of the social integration of offenders. It has been otherwise proven that reform and rehabilitation centers are one of the factors driving criminal behavior and the commission of crime, because it often corrupts the first offenders instead of reforming them, and does not guarantee overcoming the criminal tendencies inherent in the common criminals, and perhaps this is what made the majority of jurists question the value of imprisonment as a Punishment and replace it with other alternatives avoiding the convicted person from living in the prison environment, and qualify him in a way that ensures his reform and his non-return to the crime.

The prison sentence has many social, psychological and economic impacts on the individual, the family and society. This has prompted many countries around the world to resort to implementing alternative punishment for imprisonment, especially the punishment of work for public benefit, or what is called in some literature the community service, or work for public benefit, especially in crimes and offenses that occur for the first time, or by young age groups.

Therefore, the Jordanian legislator adopted Article (25) bis of the Jordanian Penal Code No. 16 of 1960 and added by its amended Law No. 27 of 2017, which states:

1. Community service: It is the obligation on the convicted person to perform unpaid work to serve the community for a period determined by the court, not less than (40) hours and not exceeding (200) hours, provided that the service shall be carried out within a period not exceeding one year.
2. Community control: It is the obligation of the convicted person to engage in a community control for a period determined by the court, not less than six months and not exceeding three years.
3. Community control conditioned by undergo one or more rehabilitation programs: It is the obligation of the convicted person to undergo a rehabilitation program determined by the court aimed at reforming and improving the behavior of the convicted person.

Reason for Choosing Topic

The choice of this topic came from an important justification, which is that the topic is recent in the Jordanian penal legislation, and added by the Jordanian legislator as an alternative to the Punishment of short-term imprisonment. Hence, the study came in order to shed light on this modern system as an alternative to the imprisonment Punishment, which, if applied on the ground, will inevitably lead to a positive image for the development of the judicial system in Jordan.

Statement of Problem

The problem of this study appears by considering the following problem: How effective is the work punishment for community service in embodying the policy of social reintegration of convicts compared to the short-term imprisonment Punishment?? In light of Article (25) bis of the Jordanian Penal Code No. 16 of 1960 and its amendment code No. 27 of 2017.

Hypotheses

The study hypotheses have been formulated as follows:

1. What is the concept of alternatives to freedom-depriving punishments?
2. What is the concept of community service punishment?
3. What are the procedures for passing and carrying out the sentence of community service?
4. What is the role of judiciary in the execution of community service punishment?

METHOD

The study adopted two methods, namely, the analytical method and the descriptive method. The legal texts, some jurisprudential opinions, and court rulings related to alternatives to

societal reform: the work punishment of community service, were analyzed for the purposes of reaching the results and recommendations of the study.

Study Plan

The researcher will address this study through the following two subjects:

1. Subject I: Alternatives to Freedom-Depriving Punishments.
2. Subject II: Procedures for the Application of Community Service Punishment.

Subject I: Alternatives to Freedom-Depriving Punishments

Freedom-depriving penalties varied, such as hard labor, imprisonment and detention, while the modern punitive policy aims to find the best ways to execute these penalties in order to achieve public deterrence and special deterrence for the convicts (Al-Kasasbeh, 2013). However, despite this diversity in freedom-depriving punishments, it has many disadvantages that prevent the achievement of public and private deterrence, which prompted those interested in modern punitive policy to include some alternative systems for this punishment, especially the short-term ones (Al-Humaidi, 2019).

In view of the negative consequences of freedom-depriving penalties represented in prisons overcrowding and congestion, and the mixing of ordinary prisoners with prisoners of a high degree of criminal risk, in addition to the enormity of state expenditures on reform and rehabilitation centers (Al-Anazi, 2014); Many countries have significantly replaced prison sentences with alternatives to freedom depriving sentences, such as: suspended sentence, undertaking and guarantee, and the community service, and others (Rami, 2019). Alternatives to freedom depriving punishment are the most important means of achieving public and private deterrence and reform, because they avoid many of those sentenced to prison and their mixing with criminals of high criminal danger (Al-Mansouri, 2016).

Therefore; this subject will be addressed through three topics, which are the following:

1. First Topic: The concept of alternatives to freedom-depriving punishments.
2. Second Topic: Motivations for applying alternatives to freedom-depriving punishments.
3. Third Topic: Characteristics of alternatives to freedom-depriving punishments.

First Topic: The Concept of Alternatives to Freedom-Depriving Punishments

Alternatives to freedom-depriving punishment are defined as: (taking non-custodial measures and penalties instead of using imprisonment, whether those measures were defined before, during or after the court).

Some believe that the definition of the alternative punishment does not differ from the definition of the original punishment, in terms of it being a punishment imposed by the penal legislature on the person who committed or participated in the crime it instead of the original punishment represented by short-term imprisonment, the aim of which is to prevent those who are sentenced to detention from being entered in center reform, it is subject to all the principles to which the original Punishment is subject.

From the above, it becomes clear to the researcher that the alternatives to freedom-depriving punishments are distinguished from the original punishments in that they are not characterized by force and reparation. The order of their execution is left to the freedom of the convict, so he/ she may accept or reject it, and if it is rejected, the original punishment of imprisonment is applied to him inside the reform and rehabilitation centers.

Second Topic: Motivations for Applying Alternatives to Freedom-Depriving Punishments

To deal with the motives for adopting alternatives to freedom-depriving punishment, it is necessary to clarify the negative effects of implementing the imprisonment punishment, and then their advantages, as in the following two points:

First/The negative effects of implementing freedom-depriving punishments: The negative effects of implementing freedom-depriving penalties are numerous and are not limited to the individual sentenced to this punishment only. The most prominent of these effects are mentioned in the following points:

Mental and psychological effects: Freedom-depriving penalties expose the convict to serious psychological effects that rise to serious psychological and mental illnesses based on a feeling of despair in life and lack of harmony with reality. The convict enters the penal institution or the first time as a pervert to come out as a professional in crime and its many methods and types.

B. Physical and organic effects: from physical diseases such as rheumatism, weakness and fatigue or anemia, in addition to infectious diseases or sexual diseases in prisons that do not apply conjugal visits (in privacy), or prisoners who refuse to such conjugal visits in these difficult circumstances. It may even lead to diseases resulting from crimes such as drug abuse, and may even lead to death after reaching the stage of suicide and losing the desire to live.

The economic and social effects: Those resulted directly on the individual himself and his family because of their direct impact on the economic situation of the prisoner, as prison cause loss of family's source of livelihood (convict's work), which leads to a kind of material imbalance for the individual and his family, whether they are dependents or sponsors for him. Also, many prisoners enter prison and are fed without effort, fatigue and without earning. If they leave prison, they feel a sense of dependency, which loses them a sense of responsibility towards themselves and then their families, as well as society's rejection of the convicted person starting from the family and all the way to the whole society.

The phenomenon of overcrowding in penal institutions: This phenomenon is the most prominent problem facing penal institutions, which is the difficulty of implementing health care programs inside penal institutions in light of overcrowding. This results in the violation of health conditions, the spread of diseases, and the absence of follow-up care. As well as the security burdens emanating from the increase in the number of convicts sentenced to imprisonment (especially short-term penalties) as well as detainees, and the corresponding absence or limited application of alternatives to them, which leads to a negative impact on the security aspects in terms of the possibility of entering prohibited items, such as sharp tools, drugs and medical substances and others. Also, increasing the various burdens related to covering various security duties such as transporting, guarding, and remanding the prisoners with the requesting authorities for the purposes of appearing before them, such as the courts.

Second/ The advantages of alternatives to freedom-depriving punishments and the justifications for adopting them: One of the justifications for applying alternatives to freedom-depriving penalties is the weak ability of society, judicial, security and penal institutions and all stakeholders in achieving real and effective reform of the convicts, and not enabling them to regain their full membership in society with all its components. In order to avoid such problems and to make the convict and the detainee retain all their social statuses, gains and ties, alternative penalties were adopted in order to achieve better protection for the convicts and to spare them the consequences of the imprisonment of freedom with its various effects.

Third Topic: Characteristics of Alternatives to Freedom-Depriving Punishments

Alternative punishments are characterized by a set of characteristics that distinguish them from freedom-depriving punishments, although they are similar in some points, but alternative punishments have what distinguishes them, and the most important of these characteristics are dealt through the following four points:

First/ The legality of alternative punishments: The legality of punishment means: that the judge is not free and elective in his judgment, but is limited by what the legislator imposes as a Punishment for the committed crime. And that the concept of legitimacy in alternative punishments must become more flexible, so that the criminal behavior is stipulated in the legislative text with certainty and without stipulating a specific punishment for each behavioral pattern, but rather a number of alternative punishments are stipulated as a Punishment for committing the criminal behavior, and its term. The judge has the discretion to determine the type and term of alternative punishment that suits each case separately, and therefore determining the pattern and duration of punishment is subject to the judge's discretion, in light of his investigating of the offender's case file and the appropriate alternative punishment.

Second: The identity of the alternative punishments: We mean that the alternative punishment shall not be judged except on the one who committed the criminal act and not others. The principle of personal punishment is embodied in the alternative punishments rather than in the freedom-depriving punishment, which some argue that the implementation of this principle is in doubt, due to the many negative effects of that punishment, the extent and scope of which is not limited to the convict, but extends beyond it to reach members of his family and the national economy. These negative effects are not available in alternative punishments, and if any, they remain within a narrow scope.

Third/ Alternative punishments' achievement of the functions of freedom-depriving punishment: It is known that one of the functions of freedom-depriving punishment is to achieve justice, public deterrence and private deterrence through rehabilitation and reform of the convict. If the alternative punishments' achievement of the function of reform and rehabilitation is not in doubt, but part of the jurisprudence tends to question the effectiveness of alternative punishments to achieve deterrence. However, alternative punishments achieve the basic purpose of the punishment represented mainly in reform and rehabilitation, by paying attention to the offender himself and the circumstances of committing his crime, and the preparation of a file for his case by a group of experts who prepare a study of his economic and psychological conditions, as well as the circumstances of committing the crime, and in the end, the preparation of a report by the committee on the most appropriate ways to treat this case,

which helps the judge to choose the appropriate punishment for each offender.

Subject II: Procedures for the Application of Community Service Punishment

The amendments to the Jordanian Penal Code for the year 2017 allowed the court, based on the social status report and with the consent of the convict, and with the exception of the case of recurrence, to order one or all of the alternatives to societal reform when ruling to suspend the execution of the original sentence imposed in accordance with the provisions of Article (54 bis) and Article (25 bis) of the Jordanian Penal Code, and the court, based on the social status report, may cancel the community reform alternatives imposed and implement the original sentence imposed in any of the following two cases: Notify him that the alternatives to community reform have not been implemented or that he has failed to implement them without an excuse acceptable to the court.

The Jordanian Ministry of Justice has created a special directorate under the name: the “*Community Sanctions Directorate*,” which was established according to the “*Instructions for the tasks of the Community Sanctions Directorate at the Ministry of Justice for the year 2018*.” Article (5) of these instructions mentioned the tasks and powers entrusted to the directorate, including:

1. Organizing and maintaining records related to social reform alternatives in hard and soft copies.
2. Coordinating and cooperating with all concerned parties on community reform alternatives, determining the types of work within each of the approved institutions, and proposing appropriate rehabilitation programs for different cases after coordination with the competent judicial authorities.
3. Providing the courts with a periodically updated list of institutions and bodies approved for implementing alternatives to community reform, community services and available rehabilitation programs, and submitting reports requested by the court, accompanied by memorandums of understanding concluded with them.
4. Upon the court request, preparing and submitting the social situation report.
5. Determining the type of work, for a person convicted of community service, within the institution based on the decision of the competent court.
6. Follow up the process of implementing the community reform alternatives at the approved institutions and bodies, submit social status reports and provide them to the court upon its request, and submit periodic reports regarding implementation to the Punishment execution judge, who in turn reviews them and submits them to the court...etc.

On the basis of this review, we will discuss in this subject the procedures for applying the community service punishment, according to the following three topics:

1. First Topic: the conditions for applying the community service punishment.
2. Second Topic: the termination of enforcement of the community service punishment.
3. Third Topic: applications of the community service punishment.

First Topic: the conditions for applying the community service punishment: The Punishment for working to serve the community does not benefit all outlaws, and most of the legislation that adopted this Punishment specified the conditions for its application, and how to implement it as well, and it will be explained through the following points:

The convicted person should not have a previous judicial precedent: This condition

means that the convicted person should not have been previously convicted, i.e. not have a previous judicial precedent. The fact that the convict has not been previously convicted is verified from his judicial precedent record. If it is proven that he does not have a judicial precedent, the judge enables him to replace the imprisonment Punishment with a community reform Punishment, including work for community service and community surveillance.

Nevertheless, the convict who had previously been convicted but benefited from rehabilitation, there is no objection that he benefits from the alternative punishment of community reform, such as working for community service or community surveillance as an alternative to imprisonment as long as rehabilitation erases all the effects of conviction.

The age of the convict should not be less than sixteen years at the time of the commission of the crime: this means that in order for the convict to benefit from the punishment of alternatives to community reform, he must be at least sixteen years old at the time of committing the act and punishable by a Punishment of deprivation of liberty. There is a set of punitive legislation, including Jordanian legislation, Kuwaiti legislation and UAE legislation, which did not set a maximum age limit for the convict to be included in the alternative punishment of community reform, including work for community service and community surveillance.

The convict shall attend the hearing and expresses his explicit consent to the alternatives punishment, including work to serve the community: Many legislations require the consent of the convict, because according to the Universal Declaration of Human Rights in (Article 4) thereof, which states: (No one is forced to do compulsory work ILO Conventions No. 29, No. 105 of 1930 and 1957; It prohibits the imposition of compulsory work, as it states: (It is not permissible to impose work on a person by force or compulsion).

The convict must attend the judgment pronouncement session, and his consent may not be obtained outside the session or through his attorney. The judge must warn him of his right to refuse this punishment. In the case of consent, the consent must be explicit, and therefore, silence of the convict is not counted as a presumption for accepting this punishment.

It is necessary that alternatives punishment, including work to serve the community, be preceded by a comprehensive and accurate research of the convict and a social investigation of his personality and circumstances: All legislations that have adopted this system require that alternative punishment, including work to serve the community and electronic surveillance, a comprehensive and accurate search of the convicted person and a social investigation about his personality, his past behaviors and the nature and circumstances of committing the crime, taking into account that he has to be of good conduct.

Article (25 bis) of the amending law of the Jordanian Penal Code No. 27 of 2017 stipulates that:

1. Community service: The convict is obligated to perform an unpaid work to serve the community for a period of no less than (40) hours and not more than (200) hour, provided that the work is carried out within a period not exceeding one year.
2. Community surveillance: The convict is subject to community surveillance for a period of no less than six months and no more than three years.

Second Topic: the termination of enforcement of the community service punishment: Enforcement of alternatives to punishment, including work to serve the community, is carried out by the convict performing all his obligations, or when he breaches the obligations imposed

on him, and we will explain this as follows: -

First: The termination of the alternatives to the Punishment by the performance of his obligations by the convict: If the convict fulfills his various obligations during the execution of the work period within or before the specified durations, the receiving institution shall notify the Punishment enforcement judge with the aim of giving the convict a notice of the termination of enforcement of the Punishment, and then sends it to the Public Prosecution, who in turn, sends that notice to the Judicial Case Authority to ratify the judgment or decision, so that the judgment becomes void and rehabilitates him by virtue of law.

Second: The termination of the alternatives to punishment due to the convict's breach of his obligations: The convict may not fulfill the obligations imposed on him, when he did not perform the work at all, or did not perform it according to the rules required by the work. After notifying the Punishment application judge by the receiving institution, he informs the Public Prosecution Office. The convict is subject to a number of penalties, the most important of which is too immediately to be subjected to the original Punishment against him.

This is what the Jordanian Penal Code has taken under Amended Law No. 27 of 2017 in Article (54 bis second), where the second paragraph states that: 2- The court may, based on the report of the social situation, cancel the community reform alternative Punishment imposed and enforce the original Punishment imposed in any of the following two cases:-

1. When canceling the stay of execution in accordance with the provisions of Article (54bis) of this law.
2. If the convict, after being notified, deliberately fails to implement the alternative Punishment or fails to implement it without an excuse acceptable to the court.

Third Topic: applications of the community service punishment: In 2019, the various courts of the Hashemite Kingdom of Jordan issued about (95) decisions and judgments that acquired a peremptory degree that included alternative penalties, including the Punishment for working to serve the community, and their implementation was supervised in the partner institutions according to the rules. There are a number of other decisions pending obtaining the final degree so that work can be done to start implementation procedures through the Community Punishment Directorate in the Ministry of Justice. There are a number of decisions issued by Jordanian courts regarding the implementation of alternatives to community reform, including the following:

A decision issued by the Karak Penal Conciliation Court in Case No. (241/2019) in the offense of cutting down a forest tree in violation of Article (33/a) of the Agriculture Law and in accordance with paragraph (C/1). The alternative punishment is community service in the Karak Agriculture Directorate at the Ministry of Agriculture, issued by the judge "*Moin Khalaf al-Suhaymat.*" Judgment decision in court dated 3/3/2019 acquired the final degree on 2/5/2018, the period of sentence set for the enforcement of the community punishment (40) hours of follow under the supervision of court liaison officer in order to enforce the community punishment.

A decision issued by the Aqaba Penal Magistrate's Court in Case No. (242/2019) for the crime of theft in accordance with Article (406/1/b) of the Penal Code and the Correctional Alternative, a community service in the Ministry of Agriculture at the Rawat Aqaba Directorate, issued by the Judge Awad Abu Kattam, in presence decision dated 3/17/2019, acquired the final degree on May 16, 2019 and the sentence period for implementing the community punishment is

(40) hours under the supervision of Aqaba Liaison Officer in order to enforce the community punishment.

A decision issued by the Petra Magistrate's Court in Case No. (109/2019) in the offense of resisting an employee during the performance of his job in violation of Article (186) of the Penal Code and threatening in violation of Article (354) of the same law. The corrective alternative to the Punishment of this crime is a community service in the Ministry of Awqaf, and Islamic Affairs Directorate at Baidha Al-Amarin Mosque, which was issued by the Judge Bilal Malkawi- in presence decision on 10/4/2019, acquired the final degree on 10/6/2019. The Punishment period prescribed for the implementation of the community punishment is (50) hours in order to enforce the community punishment.

Decision issued by the East Amman Penal Magistrate's Court in Case No. (3471/2018): Sub-Decision No. (7729/2018), executed under decision No. (1/2018) - Misdemeanor of impersonation in accordance with Article (269) of the Penal Code. The correctional alternative is a community service in the Department of Works at the Greater Amman Municipality, which was issued by Judge Mahmoud Mohammad Al-Zayoud-a court decision on 9/26/2018, with a final degree on 11/26/2018, and the sentence period set for implementing the community Punishment (40) hours in in order to enforce the community punishment.

Decision issued by the South Amman Penal Court of Magistrates in Case No. (2556/2017) - Sub-Decision No. (8123/2018) executed under No. (1/2018) - Electricity theft in violation of Article (50) of the General Electricity Law. The corrective alternative is a community service in giving training courses in the field of restaurant and hospitality skills at the Princess Taghreed Institute at the Ministry of Labor, the Vocational Training Corporation, and issued by Judge "Nour El-Din Al-Zoubi" - Judgment decision dated 10/10/2018, with final degree on 11/11/2018 2018 - The sentence period for the implementation of the community punishment is (40) hours in order to enforce the community punishment.

Decision of the Rusaifa Penal Magistrate's Court in Case No. (2148/2018) - Sub-Decision No. (4382/2018) executed under Resolution No. (1/2018) - The crime of causing death in violation of Article (27) of the Traffic Law and violating the Traffic Law for not taking the necessary precautions while driving in violation of Articles (33 and 38) of the same law. The corrective alternative is a community service in the Vocational Training Institution at the Rusaifa Training Institute, which was issued by Judge "Ghadir Samir Abu Seif" - in presence decision on 10/31/2018, with a final degree on 31/12/2018. The duration of the sentence for the implementation of the community punishment is (40) hours in order to enforce the community punishment.

CONCLUSION AND RECOMMENDATION

Community service work is an alternative punishment to a short-term freedom-depriving punishment, as it was adopted by various comparative Western and Arab penal legislation, as a means of reform and social reintegration of the convicts. Alternative societal sanctions, such as community service work and community surveillance, are characterized by a set of advantages that qualify them to be among the most effective alternative punishments in reforming the convict and reintegrating them into the social environment again.

Although the main objectives of the community service sanction is punishment and

compensate the harm as a result of a committed crime, it is supportive of the method of rehabilitating offenders through the allocated programs.

Finally, a list of research findings and then a list of suggested recommendations are to be provided.

First: The Most Important Results

Despite the developments taking place in the field of inmates' rights in penal institutions, the phenomenon of prison overcrowding prevents it from being duly applied due to the inability to implement lists of inmates' rights of all kinds. The most prominent of these effects is the increase in the phenomenon of criminal professionalism as a result of increased mixing between inmates from people with different criminal risks, which leads to an exchange of negative experiences, so the person enters as a criminal by chance and gets out as a professional criminal. High total bill for the costs shouldered by the state.

Work to serve the community is one of the most important alternative punishments, and it is distinguished from other alternatives in that it enhances the community's contribution in the field of criminal justice, because work is carried out within the framework of state and community institutions, and its implementation is based primarily on the involvement of individuals in achieving its goals.

One of the advantages of working to serve the community as an alternative punishment is that it keeps the convict connected to the outside world so that he does not lose his job, and enables him to supervise and take care of his family, and this prevents family members such as women and children from committing crimes as a result of the absence of supervision or as a result of financial need.

Working to serve the community enables the convict to continue his studies and training in order to keeping his future, especially if he is a minor.

Second: The Most Important Recommendations

The most important recommendations and suggestions in light of what has been previously discussed are the following:

We suggest that the judicial authorities dispense with the short-term freedom-depriving punishment, or at least try to reduce the sentence as much as possible, because it involves several disadvantages, which does not achieve special deterrence, and we suggest resorting to alternative punishments whenever they contribute to reforming the deviant person and commensurate with his condition, especially working to serve the community, because this punishment achieves greater benefit in reforming the convict.

Discretionary power must be given to the competent judge to decide the appropriate punishment for the convict, and he should have full discretion in assessing its suitability for him.

Determining an entity to determine whom the Punishment of working to serve the community may benefit in order to oversee him and to determine who deserves to continue under such Punishment and who shall be returned to prison.

Raising public awareness to accept such alternative penalties and work for the public benefit by explaining their benefits and stating their negatives.

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