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POLICY TO REDUCE PENAL PUNISHMENT

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Abstract

The criminal policy is what determines the direction of the legislator in the criminal field, and the authorities in charge of implementing and implementing the legislation, and various punitive tools have been used as a response to the commission of the crime, which resulted in the emergence of a crisis at the level of criminal justice. Based on the foregoing, calls have increased towards expansion in the reduction of punishment, which took several forms, the most important of which is a shift away from criminal punishment, and the policy of limiting punishment is one of the new methods used by criminal legislation to reduce the huge number of cases before the criminal judiciary. More effective means to confront crime and its impact within society. . Where contemporary criminal policy aims to consider criminal law as the last means, but it is not the only means to provide the necessary protection for social interests in society. Where it aims to consecrate the idea of not resorting to a criminal solution to confront unlawful behavior unless it is proven that other legal solutions are deficient. The policy of limiting punishment is one of the contemporary methods that have imposed themselves in criminal policy for the purpose of protecting social interests and values in new ways and methods after the criminal system failed to protect these interests. The jurisprudence differed in defining the concept and scope of the policy of limiting punishment, which necessitates defining this policy and distinguishing it from other penal policies

Introduction

"The more laws are in number, the more corrupt the conditions of the country become," Perhaps this cry explains the inadequacy of relying on severe criminal penalties to impose illusory control over society. Excessive punishment has led to adverse consequences and dire consequences. Therefore, contemporary criminal policy has tended to rationalize, and not to overuse the rules of punishment, and a correct explanation of the criminal phenomenon must be found by examining all objective factors related to criminality, i.e. studying the prevailing social and cultural aspect In society, and focus on reducing the use of criminal tools in imposing punishment as much as possible. Those who watch criminal policies see a trend towards reducing punishment, Many of those working in the criminal law believe in changing the role of the legislator, who is no longer limited to trying to limit the origins of criminalization to a narrow field, and to impose penalties facing these criminal phenomena. Rather, alternative solutions must be found to be adopted in certain circumstances that contribute to reducing punishment. The most difficult question remains,

which is how to reduce punishment? Is decriminalizing some acts sufficient to perpetuate the policy of limiting punishment? . The issue of reducing punishment raises several legal problems, among which are the most important features of the policy of limiting punishment?

A - What is the policy of limiting punishment?

1 - a. Defining the punishment reduction policy and distinguishing it from other penal policies

"We do not need much effort to demonstrate the fact that this phenomenon exists if we put in mind this uninterrupted stream of new criminal texts, and the intervention of the criminal tool to organize certain sectors - which until recently - was based on other laws, as well as amending existing criminal models. And revive it at a rate unmatched in previous decades. " Contemporary criminal policy aims to consider criminal law as the last means, but it is not the only means to provide the necessary protection for social interests in society. Where it aims to consecrate the idea of not resorting to a criminal solution to confront unlawful behavior unless it is proven The deficit of other legal solutions. The policy of reducing punishment is one of the contemporary methods that have imposed themselves in criminal policy for the purpose of protecting social interests and values in new ways and methods after the criminal system failed to protect these interests. The jurisprudence differed in defining the concept and scope of the policy of limiting punishment, which necessitates defining this policy and distinguishing it from other penal policies according to the following detail.

First - Defining the policy to reduce punishment

First 1 - Directions for determining the policy of reducing punishment The policy of limiting punishment conflicts in two directions. The first trend believes that removing the criminalization character of the act completely is a limit of punishment, while the second trend sees that the criminalization of the act is removed, and a sanction for it is approved in another law. It is a limit of punishment, and we show these two trends in succession.

- The first trend: This trend sees that the policy of reducing punishment is linked to the policy of reducing criminalization, and therefore it includes all forms of abolishing penalties applicable to crimes, or reducing or modifying them. This view is seen as limiting punishment It takes one of two forms: the reduction of objective punishment: This image is linked to the policy of limiting the criminalization, and when the punishment is completely abolished, that is, the criminal character is removed from the act, which is called limiting punishment in the absolute sense. For example: India's abolition of the crime of adultery .. Limiting personal punishment: This is when the penalties are replaced by a set of precautionary measures and special protection measures in the face of a certain group of people due to their young age or mental state. Some have expanded the scope of limiting punishment, when exposed to the idea of limiting relative punishment, which they defined as "every form of reduction within the criminal system, as this applies to cases in which felonies are punished with misdemeanor penalties or the latter penalties with police penalties." But if the matter is related to the abolition of the penalties imposed for a certain behavior, then it is considered an absolute punishment. It is worth noting that this opinion does not consider that the policy of reducing punishment necessarily means the abolition of punishment completely, but rather it may mean the abolition of some penalties in some

cases, especially the short-term penalties that cannot achieve special deterrence to the offender, but rather increase the troubles of the state and impede the success of the policy. Contemporary punishment, which may mean preventing its multiplicity in cases, in implementation of the idea advocated by the jurist Charles Lucca in 1830.

Jurist Mark Ansel - who is a supporter of this approach - believes that reducing punishment is the weakening of the social reaction that sometimes abandon the criminal path in its narrow sense, and sometimes mitigating it, and at other times replacing it with other, less confrontational and more effective methods. Mark Ansell believes that it is necessary to review criminal sanctions by treating criminals according to a positive approach. It is based on taking everything that would lead to the rehabilitation of the criminal, whether it was a punishment or a measure, in addition to that he believes that the Criminal Procedure Law should also be a means. The criminal court must also be a means to achieve this qualification through what it gives to the judiciary in terms of convenience during the criminal case.

It seems that this trend has confused the policy of reducing criminalization with the policy of limiting punishment. There is no doubt that de-criminalization of the act of "limiting absolute criminalization" will lead to the abolition of punishment, but this act may remain socially or morally reprehensible in some cases, as it is. The case when sexual relations between adults are prohibited, and the abolition of crime and punishment may push individuals to resort to implementing their own idea of punishment.

The second trend: This approach is adopted by a group of jurists, including the French judge Mireille Delmas-Marty, who believes that reducing punishment is to abandon the criminal system in favor of another legal system, such as the administrative or civil system, or the reconciliation or conciliation system. Judge Marty excludes some forms from the scope of limiting the punishment, as she does not see that the cases in which the legislator gives the possibility to reduce the punishment from the minimum legally prescribed for it, or the cases in which the judge is given the possibility of replacing the punishment with other alternatives is a limit of the punishment, but rather it is only a mechanism to reduce penalties within the criminal system. In the opinion of the jurist Oronzo Reale 1976 that the policy of reducing punishment has become an indispensable necessity. . The excessive use of criminal law recently necessitates a shift from it in favor of another law, as it is no longer hidden from anyone that the criminal law may have a calming effect in the short term, but this effect soon becomes destructive in the long run, which forces us to search for Alternatives, letting criminal law play its traditional role of criminalization and punishment to protect only core interests.

- Opinion of the European Committee for Crime Problems: The European Commission for Crime Problems (CDPC) believes that the policy of punishment reduction extends to include all forms of reduction within the criminal system, as it considers that the policy of punishment reduction includes cases of transferring the punishment for crimes from criminal penalties to misdemeanors, which can be transferred In turn, from misdemeanor penalties to penalties for violations. It also includes The policy of limiting punishment - according to the opinion of the committee - all cases in which penalties of lesser impact and less severe such as fines, community service, electronic monitoring and others replace the freedom-restricting punishment.

It seems that this opinion is closer to the correct view, as we see that the policy of limiting punishment is limited to the assumption of switching from a penal system to another legal system such as civil or administrative law, although there are some known and old ideas that are classified as applications to the idea of limiting punishment, such as the idea of "mitigating circumstances." Which is considered a mitigation tool within the criminal system.

Second - Distinguish the punishment reduction policy from other criminal policies

Second: 1 - Limiting punishment and limiting criminalization Limiting criminalization is defined as: "the legal and social recognition of a behavior that was criminal, so that the behavior after that becomes lawful, and this presupposes the abolition of the criminalization text entirely." No one will deny that decriminalizing the act will eliminate the crime, and thus eliminate the penalty, and this leads to a reduction in punishment. There is no doubt that limiting the criminalization is an official and general tool par excellence, as it is a legislative way to reverse the criminalization of some simple behaviors, the commission of which may not cause any harm, or may cause some harm, but does not require a criminal response, given the availability of other civil penalties or Administrative. Despite our belief in the need to reduce criminalization, we believe that expanding the application of this policy will lead to some consequences that may negatively affect society, the most important of which are: The expansion in limiting criminality leads individuals to question the usefulness of the repealed law in particular, and the feasibility of the rest of the laws in general, which causes individuals to reduce respect for the laws in force¹. 2- Expansion in the limitation of criminalization, and thus making the act not punishable, leads individuals to apply their own law in punishment, because decriminalizing an act and turning it into a lawful act does not mean that it has become an ethical project, as some actions remain socially reprehensible. And morally despite its legal decriminalization, as is the case when acts of abortion were decriminalized in some countries. Secondly 2 - Limiting punishment and shifting away from criminal procedure: "alternatives to criminal action"

Contemporary criminal policy tends to limit recourse to criminal procedures for all crimes and violations. The shift away from the criminal procedure is not only limited to reducing criminalization and punishment, but also means reducing cases of recourse to the criminal judiciary. The approach between the policy of limiting punishment and the idea of shifting away from the criminal procedure requires, first, defining the latter, and clarifying the foundations and constituents on which it is based, so that in the end we will define its relationship to the policy of reducing punishment. What is the shift away from the criminal procedure: We note at the outset that the jurisprudence uses the term shifting from the criminal procedure in different terms and terms, such as a shift away from the criminal litigation, or a shift away from the traditional criminal systems, alternatives to the criminal case, or the use of non-judicial procedures². By switching from the criminal procedure, we mean every means or method by which the normal criminal procedure is excluded and excluded from the circuit of enforcement to avoid the issuance of a guilty verdict, so that the guilty, with his approval, is subject to a program of a non-criminal nature that helps him

¹ Amin Mostafa Mohamed, The General Theory of Administrative Punishment Law, The phenomenon of limiting punishment, University Press, Egypt, without edition number, 2018.

²Fattouh Al-Shazly, Explanation of the Penal Code, General Section, Responsibility and Punishment, University Press, Egypt, 1997

either to reintegrate into society, or to resolve the conflict that was the cause For his crime through reconciliation or conciliation, or even resorting to medical and educational treatment. " What is meant by the criminal procedure that must be diverted from that is the criminal way that its follow will definitely lead to a ruling of conviction, but this does not prevent the use of a criminal procedure, such as a preservation order, for example, if the latter is intended to avoid a conviction. We believe that the shift from the criminal procedure is not limited to limiting punishment or limiting criminalization, but rather aims to reduce access to the entire criminal justice system, by developing alternatives that take into account the rights of the parties and achieve justice³

Mechanisms for applying the system of conversion from criminal procedure: The system of diversion from criminal procedure is applied by several means, the most important of which are those applied by judicial officers, the public prosecution, or the judge. The relationship between reduced punishment and diversion from criminal procedure:

Moving away from criminal procedures does not mean sacrificing the rights of the accused to reach the truth. Rather, it is necessary to reconcile the right of society to punish the perpetrator of the crime, and the right of the accused to defend himself and prove his innocence if he is innocent. "The idea of limiting punishment is in common with the idea of a shift away from the procedure. Both aim at not inflicting punishment on the person who committed the offense, but they differ in terms of the nature of the illegality of the act in question. In the theory of limiting punishment, the act is removed from the character of the crime and becomes legitimate from the point of view of the penal law, except that the act It remains illegal according to another law, such as the law Civil or administrative. As for the idea of shifting away from the criminal procedure, it does not affect the criminal nature of the act, as the act remains punishable by a criminal penalty, but another criminal reaction can be searched for, and if this is not possible, the dispute will return to be discussed before the competent court according to the traditional procedures.

2- Reasons for limiting punishment

First - the phenomenon of short-term imprisonment

First 1: The concept and criteria of short-term imprisonment

Definition of short term imprisonment

At the present time, deprivation of liberty punishment is generally associated with the primary goal of reforming and rehabilitating the offender, in addition to targeting the achievement of justice and deterrence, both general and special. The goal of reformatory punishment takes precedence over all its other goals, and this is clearly evident through the laws and regulations that provide for special rules for disciplining the convicted religiously, morally and professionally, in order to enable the penal administration to qualify him during the period of execution of the sentenced sentence.⁴

³ Khaled Al-Harirat, Alternatives to Punishments of Deprivation of Freedom, A Comparative Study, MA Thesis, Mu'tah University, Jordan, 2005

⁴ Sarah Maach, Penalties depriving freedom in Algerian legislation, Master Thesis, Faculty of Law, El Hadj Lakhdar University, Algeria, 2011.

The one who follows the short-term imprisonment penalty does not find a specific definition for it, which raises the question about the standard that can be adopted to determine what is meant by short-term imprisonment, especially since there is no definition for it in most of the comparative legislation, so we try to review the criteria for short-term imprisonment in the following. Criteria for considering a penalty depriving liberty of short duration The jurisprudence disagreed about the criteria that should be adopted to consider the penalty depriving freedom of short or long term. We present these criteria below, and then we explain our own opinion according to the following detail.⁵ a. Criterion for the type of crime: This opinion goes to the demand for adopting the type of crime as a criterion for determining the period of short-term imprisonment. Felonies are long-term penalties, while misdemeanors are short-term penalties. We do not see the correctness of this opinion, as most penal legislation divides crimes in terms of seriousness into felonies, misdemeanors and infractions, but the upper limit for a misdemeanor penalty may exceed the Sunnah in many cases, and this contradicts the description of a misdemeanor penalty as a short term. B. Criterion for the penal institution system: This opinion is of the opinion that the punishment is of short duration if it is executed in a penal institution specialized in implementing short-term penalties, while it is long-term if it is executed in a penal institution otherwise. ⁶This opinion is also subject to debate, because the term of the sentence pronounced by the court determines the type of penal institution in which the convict will carry out his sentence. On the other hand, “some penal legislation, such as the French legislation, for example, considers the distinction between penalties in terms of length or shortness of The competence of the penal administration, and it happens in practice that the penal institution includes convicts from the two sects, and thus this distinction becomes practically non-existent, but is merely a theoretical one. T. Criterion for the duration of the penalty: This opinion believes that the length of the punishment is the best criterion for determining the punishment by whether or not it is short. Despite the preference of this opinion over the previous opinions, a major disagreement arose within this opinion regarding determining the time period for launching the description of the short-term punishment. Some jurists decided that it should be limited to three months, while others limited it to six months, and some stipulated that it should not exceed a year. It seems that the term of the sentence is considered one of the main pillars of the consideration of a short-term imprisonment sentence, and that a short-term sentence is that of less than one year. The criterion of the efficiency of the deprivation of liberty penalty in achieving the rehabilitation of the convicted person⁷: : This opinion considers that the penalty of short-term imprisonment is the one whose period is not sufficient to implement a correctional system for the convicted person, regardless of its length of time⁸. One aspect of jurisprudence believes that the period during which the penalty of deprivation of liberty is considered to be relatively short varies according to the person of the convicted person, and the length of the period that he needs for reform and rehabilitation, as three months may be sufficient for some of the convicted, and a year may not suffice for another convict. After

⁵Shuaib Darif, Mechanisms for Executing Freedom of Punishment in Algerian Legislation, PhD Thesis, Faculty of Law, University of Algiers, 2019

⁶ Leila Kayed, Rezaia in Criminal Subjects, Ph.D., Faculty of Law, University of Jilali Yabis, Algeria, 2015

⁷ Yassin Bohentala, The Punitive Value of a Freedom Negative Punishment, Master Thesis, Faculty of Law, El Hadj Lakhdar University, Algeria, 2012

⁸ <https://bit.ly/38ecXyv>

reviewing the previous criteria, it seems that the best criterion for determining the short term imprisonment penalty is the functional time criterion, That is, the sentence is considered short-term if its duration is a year or less, and this period allows the implementation of reform programs that help in the rehabilitation of the convicted person, as the duration of one year represents the moderate maximum of the short-term imprisonment penalty. It suffices to conduct reform programs that help rehabilitate the convicted person, otherwise we will face many negative effects that affect the convicted person, his family, society, and the entire penal system. These effects can be summarized as follows. Second: The negative effects of short-term freedom deprivation penalties⁹

1- Effects on the convicts: Short-term deprivation of liberty penalties allow prisoners to mix with dangerous criminals and repeat offenders, thus causing the "contagion" of crime to be transmitted to the less dangerous convicts. Also, penalties depriving the prisoner cause a state of anxiety, discomfort, and psychological harm to the convicted person, which may lead him to commit suicide. The greater impact of these penalties is also evident in the collapse of the convict's family, and they contribute to severing the social ties that bind him to his external surroundings. Economic effects There is no doubt that the decrease in the family's income if one of its working members is imprisoned, and the income disappears completely if the working father is imprisoned alone in the family, or the mother is imprisoned if she is the family's family, would create a very difficult economic problem for the family, and the truth is that the delinquency of children and their joining of delinquent juveniles is a matter It is completely expected in the event that the family's income diminishes following the deposit of its livelihood in prison¹⁰. - Negative effects on the penal system: : Short term imprisonment penalties have not been able to reform and rehabilitate convicts. Studies show that prison spoils beginners instead of reforming them, and does not allow correction and rehabilitation programs to be applied to them, in addition to the phenomenon of overcrowding in prisons, and increasing rates of recidivism. The phenomenon of prison overcrowding is one of the most important problems created by the excessive use of short-term prison sentences. Prison overcrowding refers to: "the situation in which the number of prisoners exceeds the official capacity of the prison." Overcrowding is defined as: "that part of the occupancy rate that is greater than 100%". The phenomenon of overcrowding in prisons as a result of the rapid increase in the number of inmates and penal institutions is one of the most serious problems facing the criminal justice system in the world. Different countries suffer from the phenomenon of accumulating penal institutions, as a result of the increase in the number of convicts. The number of prisoners in the United States of America, according to a statistic conducted in 2016, reached (2,217,947) people, who were placed in 4,455 penal institutions, where the overcrowding rate reached 103.9%. While the number in France reached 74,244 people who were placed in 188 penal institutions, which makes the rate of overcrowding reach 116%. As for in the United Arab Emirates According to statistics conducted in 2012, the number of imprisoned people in the UAE reached (9824), distributed among 21 penal institutions, and this number decreased from the number of prisoners that reached 11,193 in 2006 by more than 12%.¹¹

⁹ <https://bit.ly/3401Wxi>

¹⁰ <https://bit.ly/35nxDFp>.

¹¹ • Luis Acosta 'Abortion Legislation in Europe. The Law Library of Congress 'Global Legal Research Center .2015

We conclude by saying that the excessive use of penalties depriving freedom, especially of short duration, led to unhealthy consequences for the sentenced individual and society, which led to the conclusion that the penal system failed to achieve its objectives, which we explain briefly below.

Second - the failure of the penal system to achieve its goals Many jurists and researchers acknowledged that penal institutions are no longer able to carry out the basic tasks for which they were established, namely reform, discipline, and crime reduction. It has been proven that imprisonment is one of the driving factors behind the commission of the crime. Because it often spoils the beginners rather than fixing and grooming them. The inherent criminal tendencies of repeat offenders cannot be removed. Perhaps what made the majority of jurists question the value of imprisonment as a penalty, and replace it with other alternatives, is that the convict avoided living in the prison environment in a way that ensures his rehabilitation, and his non-return to crime. Statistics indicate that 401,288 prisoners were released in the United States in 2005, but those released committed about 1994,000 arrests during the nine years following the year of their release¹². . We conclude by saying that the short-term negative freedom penalty does not fully fulfill its intended purpose. That is because the results of the field studies that were conducted on the convicted person with a short term deprivation of liberty do not appear to be exhausted. Rather, it extends to members of his family, and those with whom he is linked by a social bond, regardless of its pattern. A short term deprivation of liberty inflicts grave damage on social ties. It does not bring justice to any required respect, as it harms the convicted person, his family, and all those who are connected with him with more damages than what they have committed. Freedom. The precautionary measures have tried to solve many criminal problems, including the problem of short-term imprisonment, but we believe that reducing punishment may be the best policy in this area.¹³

Conclusion

Through our research, we concluded that extravagance in punishment led to disastrous results, which prompted legislation to act to adopt a policy of limiting punishment. This policy took one of two aspects. The first aspect was to reduce punishment within the scope of the criminal law by suspending the implementation of some penalties, or replacing them with measures and penalties. Another aspect, while the second aspect was the limitation of punishment outside the framework of the criminal law. The policy of reducing punishment within the framework of the criminal law takes many forms, the most prominent of which is the replacement of penalties depriving freedom with alternative penalties. The policy of reducing punishment aims to try to reduce, Achieving this reduction is by trying to exclude the punishment altogether or replace it with something else. We recommend the necessity of the legislative devotion to alternatives to freedom-restricting penalties because of their positive aspects for the individual and society. We also wish to expand the application of

¹² Maggy Lee ‘Decriminalization ‘in THE SAGE DICTIONARY OF CRIMINOLOGY 118 (Eugene McLaughlin & John Muncie eds. ‘3rd ed. 2012

¹³ Mariel Alper ‘Matthew R. Durose ‘Joshua Markman ‘Special Report ‘2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014) ‘U.S. Department of Justice ‘Office of Justice Programs ‘Bureau of Justice Statistics ‘MAY 2018

alternative penalties and measures, especially by increasing the minimum permissible imprisonment penalty.

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