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Alternatives to Custodial Sentences in Algerian Legislation and Their Effectiveness

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Abstract:

The legislator's current efforts are directed toward finding the best means of avoiding custodial sentences in penal institutions, in view of their drawbacks and negative economic and social effects. On this basis, the Algerian legislator has adopted alternative sanctions in its legal texts in support of the social reintegration policy it has embraced.

This paper examines the various alternative sanctions provided for under Algerian legislation, analyses the relevant legal texts, and presents proposals for additional alternative sanctions.

Keywords: Custodial Sentences; Alternative Sanctions; Conditional Release; Electronic Monitoring; Judicial Supervision.

1. INTRODUCTION

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The first subtitle opens with an introduction that presents the specific problem under study and describes the research strategy. The first subtitle opens with an introduction that presents the specific problem under study and describes the research strategy.

Most modern legal systems have adopted alternative sanctions in recent decades, particularly following their international recognition under the Tokyo Rules, adopted in December 1990 in response to the serious and well-documented adverse effects of imprisonment as the most widely applied penalty. Empirical studies have identified the following principal drawbacks of custodial sentences[1]:

- Many offenders subjected to the maximum custodial sentence often fall into a cycle of recidivism, returning to prison shortly after their release for committing further, and potentially more serious, offenses.
- The erosion of personal responsibility, the growth of idleness, and the increasing tendency toward dependence on others among inmates, particularly as prison life provides them with food, clothing, and medical care.
- Inmates are exposed to serious health and moral harm resulting from overcrowding in most prisons worldwide, leading to severe health consequences, particularly the spread of infectious diseases and the worsening of illnesses.

[1] Ahmed Fathi Sorour, Judicial Testing, 2nd edition, Dar Al-Nahda Al-Arabiya, Cairo, 1969.

Moreover, prisons bring together first-time offenders and hardened criminals, which contributes to the spread of criminal behaviour.

Against these drawbacks, the use of alternative sanctions offers several advantages commensurate with the intellectual, social, cultural, and economic developments of modern societies. The most significant of these advantages include the following:

- The system of alternative sanctions enables judges to tailor penalties to the individual needs of offenders in a manner consistent with the offence committed. Such sanctions may therefore constitute an appropriate response for offenders who are unlikely to reoffend.
- Community involvement in the management of criminal justice and in the treatment of offenders, thereby fostering the genuine participation of society in the social reintegration of delinquents.
- Relieving the state treasury of the substantial daily expenditure incurred in the maintenance of incarcerated persons.

Given that the subject of this national symposium, in its second thematic focus, concerns the effectiveness of criminal sanctions in achieving the objectives of criminal policy, the central research question addressed in this paper is: to what extent have alternatives to custodial sentences succeeded in combating criminal phenomena in Algeria, bearing in mind that such alternatives draw their authority and legitimacy from international principles and instruments?

In order to address this research question, the paper is divided into two sections: the first examines short-term imprisonment and its principal drawbacks, while the second is dedicated to the study of the penalties and measures provided for under Algerian legislation that may be employed as alternatives.

2. The phenomenon of short-term custodial sentences and its failure to achieve its objectives

This section is divided into two subsections: the first addresses the phenomenon of short-term imprisonment, and the second examines the failure of this penal system to achieve its stated objectives.

2.1. The phenomenon of short-term custodial sentences

Short-term custodial sentences[2] are a problematic element in penal policy, as their potential advantages are considerably outweighed by their drawbacks, whether for the convicted person, for his or her family (particularly when the offender is the sole breadwinner), or for society at large. Scholars who support short-term custodial sentences argue that such sentences may have an effective corrective and rehabilitative impact on certain offenders, and therefore advocate for their retention while seeking appropriate mechanisms to ensure that their

[2] Short-term imprisonment is determined based on whether the duration is sufficient to achieve its purposes—whether deterrence, rehabilitation, or reform. Accordingly, it may be defined as "the period the convicted person spends in custody that is insufficient for their reform and rehabilitation, i.e., insufficient for implementing the rehabilitation and training programmes required by the purposes of deprivation-of-liberty penalties.
See Dr. Muhammad Al-Saghir Saadawi, Punishment and Its Alternatives in Contemporary Criminal Policy, Dar Khalduniya, Algiers, 2012, 1st edition, p. 62.

implementation serves the intended purposes. Opponents, on the other hand, argue that short-term custodial sentences carry numerous drawbacks and should either be abolished or replaced by alternative sanctions that better fulfil the purposes of punishment[3]. The principal drawbacks of such sentences include the following:

- Short-term deprivation of liberty does not allow sufficient time for the implementation of rehabilitation and correction programmes for convicted persons, as these programmes require considerable effort from professional, psychological, and medical perspectives – effort that cannot realistically be provided within the timeframe of a short custodial sentence.
- Short-term custodial sentences are, in principle, insufficient to achieve either general or specific deterrence. On the contrary, they produce negative consequences arising from the offender's separation from his family, loss of honour and social standing, and the destruction of his future prospects. Furthermore, such sentences expose the offender to contact with dangerous criminals from whom he acquires knowledge and criminal experience that he did not previously possess, potentially contributing to an increase in recidivism[4].

[3] Mohammed Abu Alaa Aqida, Fundamentals of Penal Science, Analytical and Theoretical Study of the Contemporary Penal System, Dar Al-Nahda Al-Arabia, 1988, 1st edition, p. 178.

[4] Yassin Bouhentala, The Punitive Value of Deprivation of Liberty Penalties, Master's thesis, published, Faculty of Law, University of El Hadj Lakhdar, Batna, 2012, p. 59.

- The negative consequences of short-term custodial sentences extend beyond the convicted person to affect his family. The most prominent of these consequences are the psychological and economic difficulties faced by the prisoner's family, particularly when the prisoner is the sole breadwinner. Children in such families suffer from emotional deprivation and a loss of the sense of security and parental affection essential for healthy emotional development, resulting in frustration, anxiety, and psychological distress. This is compounded by feelings of resentment towards the family member who has committed the offence, all of which causes suffering to family members and undermines the cohesion of family relationships[5].
- Custodial sentences impose a significant financial burden on the state, which must bear the costs of constructing and maintaining prisons. Many states struggle to meet these costs due to economic constraints and the annually increasing number of convicted persons. The core of the problem lies in a system that ignores the basic principle of supply and demand: courts hand down vast numbers of sentences without regard to prison capacity, on the grounds that this is not a judicial concern but rather a matter for the executive authorities responsible for constructing new prison facilities.

[5] Mohammed Abu Alaa Aqida, Fundamentals of Penal Science: An Analytical and Theoretical Study of the Contemporary Penal System, Dar Al-Nahda Al-Arabiyya, Cairo, 1988, 1st edition, p. 178.

Among the significant drawbacks of short-term custodial sentences is the intellectual and cultural regression experienced by inmates, particularly those who previously occupied positions of academic or intellectual distinction. Contact with other inmates who lack intellectual maturity or who exhibit moral degradation is liable to cause harm, and the likelihood of being influenced by and imitating such inmates is a real possibility.

2.2. The failure of the penal system to achieve its objectives

Numerous legal scholars and researchers have acknowledged that penal institutions are no longer capable of fulfilling the fundamental functions for which they were established, namely rehabilitation, correction, and the reduction of crime. It has been demonstrated that imprisonment is, in many cases, a contributing factor to criminal behaviour, as it tends to corrupt first-time offenders rather than rehabilitate and correct them, and cannot eliminate the entrenched criminal tendencies of recidivists. This reality has led the majority of legal scholars to question the value of imprisonment as a form of punishment and to advocate for its replacement with alternatives that spare convicted persons from living in the prison environment in a manner that ensures their rehabilitation and prevents their return to crime.

Statistics and studies have confirmed that the majority of so-called Crimes of opportunity evolve over time into professional criminal activity. For example, it has been observed that 29% of those convicted of moral offences subsequently committed theft offences, of whom 29% went on to commit drug offences, while 40% transitioned from homicide to theft

offences[6].

Other studies and statistics indicate an increasing number of recidivists returning to prisons across the world. In the United Kingdom, the recidivism rate reached 56%. In South Africa, statistics indicate that 2,000 persons returned to penal institutions following their release in 1997. In the Czech Republic, the number of recidivists from a cohort of 2,419 was recorded in 1999. In a study conducted by Dr. Abdullah Abd al-'Ani on several Arab countries, including Tunisia, Egypt, and Jordan, it was confirmed that the average recidivism rate in these prisons reached 24% of inmates in 1993.

3. Penalties and measures provided for under Algerian legislation that may be employed as alternatives

Article 5 of the Law on the Organization of Prisons and Social Reintegration of Inmates, enacted on 6 February 2006[7], stipulates that the prison administration is responsible for implementing custodial sentences, security measures, and alternative sanctions in accordance with the law. This provision constitutes a clear expression of the Algerian legislator's intent to employ alternative sanctions, which were first introduced by the Law enacted on 25 February 2009. The Prison Organisation Law also includes a set of penal regimes implemented outside prison walls, namely furlough (temporary release), semi-custodial release, and conditional release.

[6] Ahmed Fathi Sorour, Constitutional Criminal Law, Dar Al-Shorouk, Cairo, 2002, 2nd edition, p. 164.

[7] Article 5 of Law No. 05-04 of 6 February 2005 on the Organization of Prisons and the Social Reintegration of Inmates

3.1. The penalty of Community service

The legislative amendment enacted on 25 February 2009 introduced the community service penalty, enabling judges to substitute short-term custodial sentences with this penalty within the framework of the new criminal policy, which aims to strengthen the principles of human rights and achieve the social reintegration of people deprived of their liberty, subject to the following conditions[8]:

- The offender has no prior criminal record.
- The offender was at least 16 years of age at the time of the commission of the offence.
- The sentence for the offence committed does not exceed three years of imprisonment.
- The pronounced sentence does not exceed one year.
- The duration of community service is set at between 40 and 60 hours, calculated at a rate of two hours per day of imprisonment.
- For juveniles, the duration of community service shall not be less than 20 hours and shall not exceed 300 hours.
- The judge substitutes the custodial sentence with the community service penalty after the convicted person has expressed consent to perform this penalty.

Following the expression of consent by the convicted person and upon the judgment becoming final, the sentence

[8] Seminar on Alternative Systems to Custodial Sentences, organized by the Justice Reform Support Project Management, 3 May 2009

enforcement judge summons the convicted person and directs him or her to work appropriate to his or her state of health, academic qualifications, professional skills, and social circumstances. The work performed is subject to the legislative and regulatory provisions relating to labor.

The sentence enforcement judge may issue a decision suspending the application of the community service penalty whenever social, health-related, or family circumstances arise that prevent the concerned person from performing his or her work.

In cases where the convicted person fails to comply with the obligations imposed upon him or her without valid justification, the normal procedures for implementing the custodial sentence are applied.

Comparing the new Algerian Penal Code enacted in 2024 with the 2009 law on the application of community service, several updates and new conditions are noted:

- **Expansion of the scope of the penalty**

Under the 2009 Law, the application of community service was limited and required the consent of the convicted person under specific conditions, such as partial suspension of the sentence. Under the 2024 Law, community service may be applied directly as an alternative to custodial sentences of up to five years, reflecting greater flexibility in the substitution of sentences.

- **Duration of the penalty**

Under the 2009 Law, The duration of community service was less precisely defined. Under the 2024 Law, the duration is

clearly specified as ranging from 40 to 600 hours, to be served within a maximum period of 18 months.

- **Target population**

The 2024 Law permits the application of the penalty to all convicted persons aged over 16, compared with the more stringent restrictions previously in place regarding age and conditions of implementation.

The adoption of community service as an alternative to short-term imprisonment represents an embodiment of the principle of the individualisation of penalties and the selection of appropriate measures suited to the personality of the offender and his or her prospects for rehabilitation, without excessive recourse to coercive means, thereby protecting the offender from contact with criminal elements and from the negative repercussions of the prison environment, which may give rise to disruptions in relations with others and with society.

The implementation of this alternative enables convicted people to preserve family ties and to continue fulfilling their professional and personal obligations, whilst preserving their dignity and avoiding damage to their reputation[9]. This is in addition to other positive effects, particularly the reduction of prison overcrowding and the savings to the state in expenditure on the maintenance of incarcerated persons.

3.2. Fines

In many instances, the Penal Code, in its chapters on

[9] Yousuf Abdullah bin Abdulaziz, Experiences of Other Countries in Prison Alternatives, National Human Rights Association, Riyadh, 1428 AH, p. 23.

misdemeanors and contraventions, provides for the imposition of a fine as the sole penalty, where the legislature gives the judge the option of choosing between imprisonment and a fine, expressed in many provisions as 'or either of these two penalties.

An example of this is Article 53 bis 4 of the same Code, in the section on mitigating circumstances, which provides that if the convicted person has no prior criminal record and the penalty prescribed for a misdemeanour is imprisonment or a fine, the judge may impose either of the two penalties. Where the prescribed penalty is imprisonment alone, the judge may replace it with a fine of not less than 20,000 DZD and not exceeding 500,000 DZD. Similarly, the provisions of Articles 144, 144 bis, 160 bis 7, 236, 224, 449, 243, 244, 246, 298, 303, 444, and other articles of the Penal Code permit the imposition of a fine alone.

3.3. Partial suspension of the execution of custodial sentences

The suspension of the execution of a custodial sentence imposed by a court may be regarded as another means of avoiding full execution of a deprivation-of-liberty penalty, as provided for in Article 592 of the Code of Criminal Procedure, which authorizes courts and tribunals to grant first-time offenders a total or partial suspension of the execution of the custodial sentence and the fine, provided that the judgment ordering such a measure is duly reasoned.

This constitutes an appropriate means of avoiding full or partial execution of a custodial sentence, which is precisely the purpose sought by alternative sanctions.

3.4. Protection and corrective measures applicable to juvenile delinquents

The law provides that the primary response to juvenile delinquency is the application of protection and corrective measures. Accordingly, Article 35 of Law No. 15-12 of 15 July 2015, relating to the protection of the child[10], provides that one or more protection and corrective measures, rather than penalties, shall be imposed on juveniles under the age of 18 in cases involving felonies and misdemeanours. These measures include the following:

- Leaving the child with his or her family.
- Entrusting the child to one of the parents who does not have custody, provided that custody has not been revoked by judicial decision.
- Placing the child on probation.
- Entrusting the child to one of his or her relatives.
- Entrusting the child to a trustworthy person or family.
- Entrusting the child to open-environment services for supervision within the family, school, or vocational environment.

Articles 56, 57, and 58 of the same Law also provide for additional measures applicable to children according to their age in cases where offences are committed.

3.5. Judicial Supervision

Judicial supervision is, by its nature, an alternative to pre-trial detention, as provided for in Article 125 of the Code of

[10] Law No. 15-12 of 15 July 2015 on the Protection of the Child.

Criminal Procedure, which authorises the investigating judge to order the judicial supervision of a suspect who must comply with several conditions designed to ensure appearance before the court.

It may be argued that judicial supervision is not technically an alternative sanction but rather an investigative measure. However, the rationale for discussing it in this context lies in the fact that it serves to avoid pre-trial detention. It is submitted that, if judicial supervision were applied in the manner intended by the legislature, it would enable large numbers of persons subject to criminal prosecution to avoid pre-trial detention, and subsequently to receive either short-term sentences or even acquittals.

It is worth noting in this regard that the legislature regards judicial supervision and provisional release as the rule, and pre-trial detention as an exceptional measure ordered by the judge only where the obligations of judicial supervision are deemed insufficient.

3.6. Conditional release

Conditional release, as provided for in the Law on the Organisation of Prisons and Social Reintegration of Inmates, constitutes an important alternative to custodial sentences.

In accordance with Article 134 of the aforementioned law, a convicted person serving a final sentence may benefit from the conditional release system if he or she has completed

the probationary period and has demonstrated good conduct and serious guarantees of reform[11].

In order to benefit from this system, the law requires that the applicant pay all court costs and civil damages, unless the civil party waives its claim.

Under these provisions, a convicted person who has served half of his or her sentence (in the case of first-time offenders) or two-thirds of the sentence (in the case of recidivists) may serve the remainder of the sentence outside prison under conditions that partially restrict normal liberty. Article 148 of the Prison Organisation Law also exempts convicted persons suffering from serious illnesses or permanent disabilities incompatible with continued detention from the probationary period requirement, allowing them to benefit from conditional release on health grounds.

Accordingly, it is evident that conditional release, while constituting a continuation of the sentence period, enables the convicted person to serve the remainder of the sentence within the community.

3.7. Electronic monitoring

The electronic monitoring system is one of the modern methods for serving short-term custodial sentences outside prison – that is, in the community – in a manner commonly described as 'house arrest'. This system allows the convicted person to remain in his or her home while tracking his or her

[11] Article 134 of the Law on the Organization of Prisons and Social Reintegration.

movements and monitoring him or her by means of a device resembling a watch or bracelet attached to the wrist or ankle, hence the designation 'electronic bracelet'. Several concepts and terms have been applied to electronic monitoring systems, though they all serve the same fundamental purpose. English-language legal scholarship refers to this device as an electronic bracelet, while others employ the term electronic surveillance.

Electronic monitoring is defined as the use of electronic means to verify the presence of the person subject to such monitoring at a specified place and time agreed between that person and the judicial authority ordering the measure.

It is therefore clear that placement under electronic monitoring constitutes a method of implementing custodial sentences outside prison, and may be ordered either as a measure of residence restriction pending trial or as an alternative to a custodial sentence. It operates by requiring the person to remain at home during specified hours determined by the court, while wearing an electronic bracelet on the ankle; if the bracelet is removed or moved beyond its permitted range, an immediate electronic alert is sent to the monitoring authority.

The Algerian legislature has defined placement under electronic monitoring as a procedure that enables a convicted person to serve the entirety or part of a sentence outside the penal institution, consisting of the convicted person wearing, throughout the specified period, an electronic bracelet enabling knowledge of his or her presence at the place of residence specified in the placement order issued by the sentence enforcement judge.

4. CONCLUSION

Despite the many criticisms directed at alternative sanctions on the grounds that they fail to achieve the aims of punishment – namely deterrence – such sanctions remain more appropriate for convicted persons than custodial sentences because of the drawbacks and negative consequences produced by custodial sentences executed within penal institutions. At the same time, alternative sanctions contribute to the rehabilitation of the offender by distancing him or her from the criminal environment, and constitute a guarantee of human rights. It must also be noted that enriching our legal framework with such alternatives to custodial sentences was a necessary measure given its economic and social advantages, which assist broad categories of delinquents in maintaining their social ties with their families and their external environment, are consistent with the requirements of re-education and social reintegration programmes, protect them against the risk of reoffending, assist in reducing prison overcrowding, And relieve the state of the substantial costs that custodial sentences entail. However, the application of these new mechanisms depends on the extent to which all relevant actors in the field participate actively in implementing these provisions and is contingent upon the effective application of the legislation in practice.

The introduction of new alternatives would enable our penal system to free itself from the drawbacks of short-term custodial sentences and would preserve for a large number of first-time and non-dangerous offenders their stability within their social environment and their family and professional

ties, while protecting them from the contagion of criminal behaviour and the risk of recidivism.

An examination of the reality of crime in Algeria reveals that the categories of offenders consist predominantly of young persons under the age of 30, that most offences are minor in nature, and that the most commonly imposed penalties are short-term sentences not exceeding one year of imprisonment. Added to these facts are other encouraging factors, particularly the positive transformations experienced by Algerian society across social, cultural, and economic dimensions, which have made it increasingly oriented towards modernity and the adoption of the most successful internationally leading scientific approaches.

Among the proposed measures to serve as alternatives to custodial sentences, the following are suggested:

- **Expanding the scope of fines and suspended sentences**

The adoption of fines and suspended sentences as principal penalties for minor misdemeanours and contraventions, supplemented where necessary by ancillary sanctions restricting economic, social, or cultural activity, would serve the purposes of deterrence. This should be accompanied by an increase in the minimum and maximum levels of fines to enable judges to determine the appropriate fine for each offender according to his or her individual circumstances and financial situation.

- **Ordering restitution to the victim or compensation**

Such a measure may prove more effective in certain cases, such as the theft of an item of minor value or its

dissipation where it was held in deposit by the perpetrator, and where the perpetrator has restored the matter to its original state or returned the stolen item or its equivalent. In such circumstances, this measure may serve as an alternative to custodial sentences.

- **Withdrawal of the Driving Licence**

This penalty may be adopted as an alternative to custodial sentences, particularly in cases of involuntary causing of bodily harm and negligent homicide arising from road traffic accidents.

- **Prohibition on holding a cheque book or payment cards**

This penalty is most appropriate in cases involving the issuance of worthless cheques where the offender settles the debt before the institution of criminal proceedings, or where the amount involved is minor and the accused has taken steps to pay the sum due.

- **Prohibition on the exercise of a professional activity**

The custodial sentence may be substituted by a prohibition on the exercise of professional activity in the course of which the criminal act was committed. This may be supplemented by a fine where necessary.

- **Expanding the scope of pardon as a bar to criminal prosecution**

The scope of this procedure may be expanded to encompass an important category of offences, enabling the victim to request pardon during the course of proceedings, thereby putting an end to criminal prosecution and

sparing a number of offenders from incarceration. Such cases are deeply rooted in our society, which maintains a strong tradition of reconciliation, tolerance, and adherence to the counsel of family and friends – values of the highest moral order that merit encouragement and adoption in the service of social cohesion. This would apply to offences such as encroachment on immovable property, minor cheque offences, breach of trust, alteration of boundaries, and similar offences.

This position is supported by the fact that the adoption of reconciliation within our legal system finds its basis and dimensions in the provisions of the Holy Quran: 'And if two factions among the believers should fight, then make settlement between the two' (Surah Al-Hujuraat, Verse 8), and 'The believers are but brothers, so make settlement between your brothers' (Surah Al-Hujurat, Verse 9). And we have numerous examples in the life of the Prophet (peace be upon him) and the righteous predecessors of reconciliation that ends disputes.

- **Exclusion from public procurement**

This measure may serve as an alternative to custodial sentences where it is established that a contractor or a company has committed fraud in the works entrusted to it, or where the offence is connected to the status of a contractor.

In conclusion, the proposals presented in this paper are intended to contribute ideas for specialists on the subject of alternatives to custodial sentences, which would facilitate judicial work and provide additional alternatives that serve the purpose of deterrence without the psychological and social harms that affect delinquents who have been drawn into a path

of deviance by chance, poor judgment, or through the commission of offences that do not in themselves reflect the dangerousness of the perpetrator, such as certain offences introduced by recent legislation, including driving without valid insurance, construction without a permit, failure to hold a valid vehicle inspection certificate, and road traffic offences, among others.

The enrichment of our legal framework with alternatives to custodial sentences is more than necessary given its economic and social advantages, which assist broad categories of delinquents in maintaining their ties with their families and external environment, are consistent with the requirements of re-education and social reintegration, protect them against the risk of reoffending, assist in reducing overcrowding in prisons, relieve the financial burden on the public treasury, and free us from dependence on classical means of punishment

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