



Community service as an alternative to custodial sentences

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Abstract

Drawing upon the implementation of the Intensive Alternative, this article explores the key concerns voiced by sentences when presented with a Pre-Sentence Report proposing an alternative to custody. It is argued that the crucial element for effective implementation lies in the gatekeeping provided by PSR authors (probation staff), the dissemination of timely and relevant information to sentences, and the reassurance that the order fulfils the requisite penal punch to avoid accusations of soft options. There have been several reasons advocating for the necessity of a non-custodial penal system, which combines factors related to the correctional institutions themselves and the increasing pressures on them due to overcrowding, along with the specific requirements of the convicted individuals, such as their age, health, or social circumstances, among other factors that may influence the court's sentiment and impact its judgment on the convicted person. Issues concerning the purpose and appropriateness of community penalties have often generated heated debate, a range of broader developments have lent these issues a particular salience very recently. At the time of writing, community penalties are changing rapidly in terms of the way in which they are being implemented, 'managed' and evaluated by relevant criminal justice agencies and professionals, but the way in which such penalties are conceived of and justified, is also seeing some significant shifts. This has led to the reinforcement of the policy encouraging the use of alternatives to custodial sentences, aiming to achieve the greatest possible rehabilitation of offenders, while maintaining the security and safety of society, away from correctional institutions. In this regard, legislator made alternatives to custodial sentences another pillar in the penal system. These alternatives must be linked to an internal motivation in the convicted individuals, encouraging them to always regret their actions, work on correcting their behavior, believe in it, and seek ways for its success. In this context, a set of these alternatives was established, along with defining methods for their implementation, as well as organizing numerous agreements with state institutions to partner in executing the new penal system. This study employs a socio-legal approach that integrates legal analysis with social research methods. Data were gathered through both library and field research, providing a combination of normative and empirical insights. The primary analysis technique used is descriptive analysis, based on the substance of the problem to be studied in this research, this research is legal research, which contains, theoretical, namely research that primarily examines problems based on positive legal rules.

Keywords: Criminal law, Punishment, Alternatives to punishment, Deprivation of liberty.

1. Introduction

The rules of criminalization and punishment have evolved over different eras due to several reasons, the most important of which are: the increasing number of people and their presence in closed societies, the emergence of new criminal behavioral patterns, followed by a diversification in the types of crimes. Crimes are no longer limited to those committed against persons and property only. There has also been the development of tools and methods of committing crimes, especially electronic ones, which has led to an increase in the number of crimes, due to the expansion of the circle of criminals. Committing crimes is no longer limited to those who are accustomed to crime, but now crimes are being committed by individuals who are referred to as accidental criminals.

Since custodial sentences have become unsuitable for addressing many crimes or dealing with their perpetrators due to the minor harm caused by them or the less dangerous nature of the offenders, such as those committing traffic violations or non-intentional crimes (like causing harm), it became necessary for the legislator to create a penal system that is appropriate for these types of crimes and their offenders. Thus, deterrent penalties emerged, along with the substitution of imprisonment with fines, the suspension of the penalty, and the suspension of pursuing the offender based on the complainant's complaint. All of this aims to alleviate the harshness of custodial penalties and their negative effects, or to avoid them as much as possible.

However, to prevent some from thinking that this penal system might encourage recidivism, and to avoid exaggerating the consideration for the offender

while neglecting the consequences of their crime, and in light of the importance of non-custodial penalties in giving the punishment its true meaning, the Jordanian legislator, like other countries, quickly sought to reconcile the personality of the offender with the interest of society in preventing the offender from returning to criminal activity. This was achieved by finding alternatives to custodial sentences and giving them a central role in rehabilitating offenders away from correctional and rehabilitation centers. These alternatives partly resemble custodial penalties, such as limiting the offender's freedom or cutting them off partially from their source of income (hammouri, 2024). Most of these alternatives are implemented without the offender's consent and are enforced on their behalf, leaving it to the discretion of the court to balance between custodial penalties and all the alternatives mentioned earlier.

2: The substantive aspect of alternatives to custodial sentences

Alternatives to custodial sentences emerged as new penal sanctions in the Jordanian penal system, following the vision of the King and as a result of his recommendations to the Royal Committee for Judicial Development in 2016. These alternatives first came to light in Law No. 27 of 2017, which amended the Penal Code No. 16 of 1960, under the name of "Alternatives to Community Rehabilitation." These alternatives were introduced alongside custodial sentences and other penalties to maintain public safety and security from crime, as well as to attempt to reform and rehabilitate offenders while considering their circumstances. They aim to prevent recidivism away from correctional and rehabilitation centers (prisons), as they are expected to be effective tools in reintegrating offenders into society, which still suffers from the negative effects of custodial sentences.

In the text of Article 25, repeated of the Penal Code, there are two key points: the first concerning the types of these alternatives, and the second regarding the scope of their application.

2.1: Types of alternatives to custodial sentences

The alternatives to custodial sentences have varied to suit the crimes committed, regardless of the gender or nationality of the convicted individual (Ken, 1985)

, and take into account their personal circumstances as much as possible. Like custodial sentences, these alternatives can only be imposed on natural persons.

In this way, these alternatives serve as assistance from the legislator to the convicted individuals, reflecting his trust in them to encourage them further to make the utmost effort to quickly abandon their criminal behavior and regret it (Pallavi,2023). The imposition of these alternatives is within the authority of the trial court, following the procedures established by law, and they cannot be requested for the first time or raised before the Court of Cassation.

Based on the principle of the legality of punishment, these alternatives were introduced exhaustively and include:

3: Community service

The Jordanian legislator defines community service as obligating the convicted individual, with their consent, to perform unpaid work for the benefit of society for a specific period determined by the court, not less than 40 hours and not exceeding 100 hours (Tareq,2023).

This type of alternative is expected to enhance the spirit of cooperation and solidarity between government sectors, as these are the entities where community service is carried out. It helps in developing human resources and equips the convicted individual with certain skills from the partner institution and its employees, which may assist in alleviating their workload, even if temporarily and partially(Priyanshi,201). This alternative is exclusively implemented within state institutions that have signed memoranda of understanding with the Ministry of Justice for this specific purpose. It also contributes to fostering a culture of voluntary work among individuals.

This alternative also aims to cultivate a habit of work, develop consistency, and adherence to its systems, in preparation for fostering a lifestyle that is organized and in compliance with the law. This alternative is applied to offenders who have been proven to commit crimes due to laziness or neglect in performing their work. The goal of cultivating and developing the habit of work is to eliminate this criminogenic factor, such as in cases of committing

the crime of begging or neglecting public duties(Robert,2002).

It is also expected that this alternative, along with other alternatives, will have a hidden authority that pushes the convicted individual toward greater deeds and encourages them to abandon minor offenses (misbehavior or criminal acts). Many people have been guided by being preoccupied with work, reciting parts of the Quran, a prophetic saying, or a wise quote. Therefore, these alternatives must be linked to an internal motivation, wherein the convicted individual feels the wrongness of their actions and desires to correct them, thus committing to not returning to those actions. This issue is closely related to their approach to implementing these alternatives with seriousness, energy, and without evasion or deception(Gordon,1994).

"When the legislator specifies this alternative or other alternatives between two limits (minimum and maximum), it is to enable the competent court to achieve variation in penal treatment among offenders based on their circumstances, conditions, personalities, ages, education, and criminal records. It would not be just to punish them equally, which is referred to as the principle of individualization of punishments (Anita Abdul,2013).

However, the court, when considering mitigating factors, cannot reduce the minimum limit specified for each alternative, as is the case with custodial sentences and fines(Anthony,2017).

The legislator stipulates several conditions for imposing this alternative, which are:

The convicted person's consent to perform community service as an alternative to the legally prescribed prison sentence for the crime committed is required. The consent of others, such as their legal representative or a family member, is not considered valid. This condition applies exclusively to this alternative, as it restricts the convicted person's freedom without depriving them of it. It also requires them to allocate some of their time to perform community service, unlike other alternatives.

Furthermore, this alternative necessitates that the individual be in good health, as forcing someone to work without their consent is prohibited except

under legal provisions. Additionally, implementing this alternative may involve certain costs, such as transportation expenses to and from the partner institution, which the convicted person might not be able to afford. This is particularly relevant since one of the key objectives of alternative penalties is to ensure that the convicted person does not lose their source of income, education, or family connection (Hammouri,2024).

Therefore, it would be unreasonable to impose financial burdens on the convicted person to implement this alternative or require them to allocate time they may not have due to work, family, or educational commitments. In this regard, the legislator made a wise decision in requiring the convicted person's consent to apply this alternative. This ensures that they are not unable to comply due to financial or health reasons, which could otherwise result in reverting to a custodial sentence. Additionally, obtaining consent helps ensure their active participation in making this alternative effective in achieving the objectives of modern penal policies.

It is worth noting that employing a convicted person, even against their will, is constitutionally permissible. Article 13/2 of the Jordanian Constitution of 1952 states:

"Forced labor shall not be imposed on anyone(Smit,2008). However, labor or service may be required by law as a consequence of a court ruling, provided that such labor or service is performed under the supervision of an official authority and that the convicted person is not hired out to individuals, companies, associations, or any public entity or placed at their disposal."

Since the legislator has not explicitly defined the concept of recidivism for the purposes of applying Article 25 bis of the Penal Code, we refer to the general rules on recidivism as stipulated by the legislator in Articles (101-104) of the Penal Code.

Recidivism is a general aggravating circumstance for felonies and misdemeanors but not for infractions. It is a personal aggravating circumstance, meaning it pertains to the convicted individual (the repeat offender). The reason for this aggravation is linked to the offender's character and the latent danger

revealed by the crimes they have committed, which justifies the likelihood of committing further crimes in the future.

Furthermore, when a repeat offender commits a new crime after having previously been sentenced to a penalty, it indicates that the initial punishment was insufficient to deter them. This justifies the imposition of a harsher penalty in hopes of achieving deterrence. (Al Zubi,2022).

Accordingly, the Jordanian legislator devised a plan to render repeat offender's ineligible for the penal system related to alternatives to custodial sentences. This decision stems from the inherent criminal danger within their character, which is difficult to eliminate even through imprisonment. As a result, alternative penalties become ineffective in rehabilitating or deterring such offenders.

Moreover, it would be inconsistent to impose harsher penalties on repeat offenders in some instances while granting them leniency in others. Therefore, the legislator adopted a consistent approach in dealing with recidivist criminals.

Recidivism is also a personal circumstance that affects only the accused against whom it is established, without extending to other convicted individuals who participated in the same crime. In other words, recidivism prevents the repeat offender from benefiting from alternatives to custodial sentences, but this restriction does not apply to other non-recidivist accomplices (Marti,2006).

Therefore, before issuing its decision on applying alternatives to custodial sentences, the trial court must first determine whether the convicted person qualifies as a repeat offender under the legal definition provided in Articles (101-104) of the Penal Code and in accordance with the requirements of Article 25 bis of the same law.

4- Preparing a social status report on the convicted person: This is a general requirement for sentencing with any alternative to custodial penalties, whether in felonies or misdemeanors. Article (5) of the Regulation on Means and Mechanisms for Implementing Alternatives to Custodial Sentences No. 46 of 2022 states:

"For the purpose of sentencing with any of the alternatives to custodial penalties, the following procedures shall be followed:

The court shall assign the liaison officer to prepare a social status report according to the designated template and provide them with the case file."

The social status report is a fundamental requirement for sentencing with alternatives to custodial penalties. It serves to assess the convicted person's character, personal circumstances, and the conditions under which they committed the crime. This helps determine the most suitable alternative penalty that can replace imprisonment while achieving its intended objectives.

Table 1. Number of crimes distributed by type of crime committed in the Hashemite kingdom of Jordan from 2020 - 2023

Kind of Crime	2023	2022	2021	2020	Total
Felony Crimes	5579	5613	5237	6169	22598
Attempted Murder	314	364	290	346	1314
premeditated Murder	56	49	50	39	194
Murder	47	57	53	51	208
Beating Leading to Death	2	2	6	9	19
Criminal Theft	2848	2826	2827	3761	12262
Kidnapping	151	214	162	168	695
Sexual Abuse	931	991	904	822	3648
Forgery	158	116	110	71	455
Currency Counterfeit	177	101	66	98	442
Aggravated Assault	772	741	657	658	2828
Bribery	90	104	77	103	374
Criminal Conspiracy	7	15	12	13	47

Abortion	22	26	22	25	
Embezzlement	4	7	1	5	17
Misdemeanor Crimes	17205	17282	15754	16018	66259
Manslaughter	46	43	31	26	146
Misdemeanor Theft	7873	7773	6852	7192	29690
Fraud	3828	4060	3552	2687	14127
Attempted Theft	360	314	342	437	1453
Resisting & Assaulting Public Employees	2529	2165	2116	2444	9254
Car Theft /Auto Theft	367	422	407	572	1768
Jobbery	4	9	8	9	30
Prostitution	64	39	48	41	192
Adultery	144	175	166	146	631
Violating The Law of Archaeology	268	281	326	329	1204
Firing Gunshots	1716	1998	1902	2127	7743
Gambling	6	3	4	8	21
Total	45568	45790	41982	44366	

The process of preparing this report begins with a meeting between the liaison officer and the convicted person inside the court, in a private room, away from others. The purpose of this meeting is to assess the individual's traits and skills—whether criminal tendencies or positive attributes—and then recommend the most appropriate alternative to the trial court.

During this meeting, the liaison officer verifies the convicted person's identity and gathers personal information, including their name, gender, nationality, age, available means of contact, as well as their social, mental, biological, and psychological health status. The report also examines the individual's economic situation, educational background, and criminal record (behavioral history).

Additionally, reviewing the case file, which is in the liaison officer's possession, is essential to understand the nature of the crime committed. The complainant's identity and their willingness (or unwillingness) to see the convicted person punished are also integral parts of the social status report.

This meeting is of utmost importance and cannot be bypassed. The social status report must not be prepared in the absence of the convicted person or based on information provided by their legal representative or a relative acting on their behalf(Ruby,2024).Once the liaison officer gathers this extensive set of information about the convicted person, they must recommend to the court the most

suitable alternative(s) for the case. These details effectively serve as the rationale behind the officer's recommendation of one alternative over another.

For this reason, the legislator did not prescribe a specific alternative for each crime, unlike custodial sentences and disciplinary penalties. Instead, they considered the individual circumstances of the convicted person. This approach results in variations in sentencing (alternative penalties) among individuals convicted of the same crime without violating the principle of equality in punishment.

This principle does not preclude differences in sentencing outcomes, as long as they are based on the varying circumstances of the convicted individuals and remain within the legal boundaries set by the relevant legal provisions. (Geuze,2023, Jam et al., 2025).

Based on this, the liaison officer does not have the right to refuse to make this recommendation, as can be inferred from Article 5/B of the Regulation on Means and Mechanisms for Implementing Alternatives to Custodial Sentences, which states:

"The liaison officer prepares the social status report, including a recommendation for one or more alternatives to custodial penalties, and submits it to the court."

The refusal of the liaison officer to recommend alternatives to custodial penalties (i.e., recommending the non-application of alternatives)

constitutes an unacceptable obstruction to the judiciary's authority to resolve disputes and determine the appropriate punishment. The liaison officer's role in recommending alternatives to custodial penalties is an auxiliary one, supporting the judiciary, rather than being parallel to it. As a result, the officer's involvement does not violate the principle of judicial authority over sentencing. The court is the one that ultimately decides and pronounces the sentence.

From all of the above, we conclude that the liaison officer's role is of utmost importance. To effectively carry out this role, the officer must possess a high level of legal and social knowledge, be intelligent, capable of analyzing personalities, and also have tact and diplomacy. This helps ensure that the convicted person has a positive impression of the officer, which encourages them to interact calmly and provide the officer with relevant information to assist in their duties.

There have been instances where some convicted individuals provided false information to the liaison officer, which hindered the implementation of alternatives to custodial penalties. For example, some offenders have given incorrect contact details, disrupting communication when the alternative is being implemented and causing delays until they can be reached by other means, provided this happens before the legal deadline for executing the alternative. In some cases, contact with the offender cannot be made, leading to the cancellation of the alternative and the application of custodial penalties instead.

Additionally, there are cases where the convicted person hides their medical condition from the liaison officer, preventing the implementation of the alternative when the time for execution arrives. In such situations, the alternatives to custodial penalties lose their significance and the objectives for which they were created.

Therefore, the liaison officer must have the ability to accept everyone without discrimination. They should not display any signs of rejection towards the person sitting before them or treat them as a convicted individual. The officer must also maintain neutrality, not showing leniency toward one offender while dealing harshly with another when recommending

alternatives (Andrei,2024).

Consequently, the case file should be the officer's sole tool for making an appropriate recommendation for the convicted person. The officer's personal knowledge of the offender or the complainant should not serve as the basis for this recommendation. The officer must recognize that their recommendation is an integral part of the final judgment in the case, and they should be fully informed about all relevant details before issuing their recommendation.

As a result, the presence of these conditions in the convicted person does not mean that the court is obligated to apply the provisions of Article 25 bis of the Penal Code. Rather, it is a matter of judicial discretion, a legal power that the court may exercise if it finds justification in the case file. The court may find that applying alternatives to custodial penalties does not achieve the intended purpose of the punishment, such as when the convicted person's act involves inherent criminal danger, like the crime of firing firearms without justification, even if the person is not a repeat offender. Alternatively, the court might find that applying these alternatives undermines the complainant's rights, especially in property crimes, unless personal rights are waived or the stolen property is returned to its rightful owner(McNeill,2013; Ahmed et al., 2024).

However, the Court of Cassation has required that the trial court, when adjudicating the case, examine the convicted person's request if they express a desire to apply Article 25 bis of the Penal Code in the event of a conviction. The trial court is not allowed to disregard this request without consideration, whether by accepting or rejecting it.

Therefore, we believe that before issuing a judgment on the case, the court must consider the nature of the relationship between the perpetrator and the victim, as well as the victim's role in the occurrence of the crime. The court should also take into account the victim's health condition, gender, and age. Additionally, the court should assess whether the convicted person is continuously employed or pursuing university studies. These factors, which become clearly apparent to the court through the social status report prepared for the convicted person, should guide the court in selecting the appropriate course of action for punishing the

perpetrator (Beth,2011).

It is worth noting that the trial court has the authority to sentence the convicted person to more than one alternative penalty for the same crime. The Court of Cassation in Jordan has ruled that: "The imposition of alternative penalties is within the discretion of the trial court, and this must be done in accordance with the conditions specified in Article 25 bis of the Penal Code. The court may also impose supplementary penalties, such as confiscation or fines, if applicable."

Recommendation

These alternatives share the same characteristics as custodial penalties and are based on the same fundamental objectives of punishment, namely general and specific deterrence, along with a set of other goals that take into account the convicted person's circumstances and personality. Additionally, they consider the conditions of penal institutions and the overcrowding of inmates they may be facing.

The Jordanian legislator should not overemphasize the circumstances of the convicted person or the conditions of penal institutions at the expense of public safety and security. Therefore, it is recommended that the legislator consider replacing the prison sentence with alternatives to custodial penalties after the completion of one-third of the original prison term or make this replacement applicable to short-term sentences. Moreover, the relevant authorities should monitor the convicted person after the implementation of the alternative penalty for at least one year and observe their behavior during this period to assess the effectiveness and impact of these alternatives in improving the conduct of those who undergo them.

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