

NON-CUSTODIAL SENTENCES IN ALGERIAN LEGISLATION AND THEIR EFFECTIVENESS

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Abstract:

Current legislative endeavours are currently focused on discerning optimal strategies to alleviate the imposition of penalties that result in the deprivation of liberty. Within penal institutions, acknowledging their inherent constraints and unfavourable socio-economic repercussions. In light of this concern, the Algerian legislature has integrated alternative sanctions into its legal frameworks, thereby reinforcing the policy of societal reintegration that it espouses.

This article undertakes a critical assessment of diverse alternative sentencing approaches delineated in Algerian legislation. It is accompanied by a comprehensive analysis of the relevant legal provisions and also includes suggestions for additional alternative sanctions.

Keywords: *alternative sanctions, offender, legislative framework, imprisonment.*

INTRODUCTION:

Modern criminal legislation is currently experiencing swift evolution, marked by a strong inclination towards incorporating alternative sanctions as effective replacements for imprisonment. This metamorphosis empowers judicial entities with a wide spectrum of choices to impose appropriate penalties, taking into account variables such as the offence's nature, the offender's characteristics, the severity of the transgression, the contextual elements surrounding the crime, and the potential for rehabilitation.

In acknowledgment of this imperative, a substantial number of contemporary legal frameworks swiftly adopted the notion of alternative sanctions after the global endorsement of the Tokyo Rules in December 1990. These regulations were established in acknowledgment of the glaring adverse and profound ramifications linked to incarceration, which has conventionally remained the most commonly employed punitive recourse. Empirical investigations have shed light on various shortcomings of imprisonment, as outlined below:¹

1. A noteworthy proportion of individuals subjected to maximum imprisonment sentences exhibit a tendency to relapse into offender behaviour shortly after their release, frequently engaging in more severe transgressions.
2. Imprisonment nurtures reduced personal responsibility, an escalation in lethargy, and a dependency on external support systems, notably since incarcerated individuals have their basic needs, including sustenance, clothing, and medical attention, provided for them.
3. Those incarcerated also confront health and ethical predicaments stemming from rampant overcrowding, which is pervasive in many penitentiaries worldwide. This predicament results in grave health complications, particularly the proliferation of infections. Recent years have witnessed an exacerbation of these challenges, epitomised by the transmission of novel diseases such as the coronavirus.

In contrast, the use of alternative sanctions presents a range of advantages that harmonise with the dynamic intellectual, social, cultural, and economic advancements of modern societies. Evident merits encompass :

- The alternative sanctions' framework empowers judges to tailor penalties to the unique needs of offenders, ensuring a harmonious match with the specific nature of the transgression.



Consequently, a fitting retribution can be devised for individual wrongdoers who may not be predisposed to reoffend.

- Incorporating society into criminal justice administration and offender rehabilitation nurtures meaningful societal involvement in the process of reintegrating wrongdoers.
- By curbing the substantial daily expenses associated with caring for incarcerated individuals, the use of alternative sanctions mitigates the fiscal burden on the state treasury.

Prior to delving into the elements of the topic, it is crucial to underscore several significant observations:

1. The matter of alternative sanctions has garnered and continues to garner considerable research and academic focus within the domains of criminology and penology. The overarching goal is to pinpoint substitute measures for incarceration in lieu of imprisonment.
2. The intricacy of criminal severity arises from penalties designed to function as deterrents for convicted individuals. This phenomenon necessitates a thorough examination from both theoretical and empirical perspectives. The aim is to formulate scientific and pragmatic resolutions that prevent crime and uphold punitive objectives. This exploration transcends the confines of criminologists and penal experts, encompassing a wide spectrum of professionals such as psychologists, sociologists, legal scholars, educators, and policymakers.
3. It is vital to recognise that prison overcrowding is not unique to Algeria. This challenge permeates various nations, albeit with varying degrees of prevalence.
4. This article does not aspire to undertake an exhaustive study encompassing all manifestations of alternative sanctions. Such a comprehensive endeavour demands substantial time and in-depth inquiry. However, this contribution aims to catalyse discourse and underscore pivotal facets of the subject. Our aspiration is for this effort to capture the attention of researchers spanning diverse disciplines and orientations.

Importance of the Study:

The significance of this study lies in its exploration of progressive punitive measures, specifically alternative sanctions, as a viable alternative to the deprivation of liberty within the realm of crime prevention. Notably, this approach has been recently embraced by the Algerian legislature. The study's import is further amplified by its pioneering nature, given that only a limited array of legal frameworks have integrated and operationalized such measures. This is exemplified through innovations like the implementation of systems such as electronic surveillance. Consequently, the primary aim of this study is to shed light on this burgeoning sphere of inventive punitive sanctions.

Research Objectives:

The primary objective of this study is to comprehensively examine the effectiveness of alternative sanctions, encompassing their application, benefits, drawbacks, and appropriateness as an innovative category of penalties designed to attain the core objective of punishment: the rehabilitation and societal reintegration of offenders.

Research Problem:

Given that the core focus of this research paper centres around assessing the effectiveness of criminal sanctions in alignment with criminal policy objectives, the central inquiry driving this discourse pertains to the degree of success associated with alternatives to incarceration, such as non-custodial sentences, in addressing criminal dynamics within Algeria. These alternative measures find their basis and legitimacy in established international principles and conventions.

To address this research problem, our study is meticulously structured into two primary segments. The initial section meticulously examines the domain of short-term prison sentences, underscoring their inherent limitations. The subsequent section is dedicated to an exhaustive exploration of the array of penalties and measures enshrined within Algerian legislation that hold potential for adoption as alternatives.

1- Section I: The Phenomenon of Short-Term Imprisonment and Its Ineffectiveness in Achieving Objectives

This section is subdivided into two distinct subsections. The first subsection delves into the phenomenon of short-term imprisonment,² while the second subsection meticulously scrutinises the inadequacy of this punitive system in attaining its intended objectives.

1-1-The Phenomenon of Short-Term Imprisonment:

The application of short-term freedom-deprivation sanctions³ poses a dilemma within the scope of penal policy. The prospective advantages that might arise from such penalties are outweighed by their inherent disadvantages. These drawbacks resonate not just with the convicted individuals themselves, but also ripple through their families, particularly when the individual serves as their primary source of support. Moreover, the broader society is not exempt from the impact. A segment of legal scholars who advocate for short-term freedom-deprivation penalties contend that they can significantly contribute to evaluating and rehabilitating specific offenders. Consequently, the strategy should not be discarded, but rather refined through suitable methods to actualize its intended objectives.

Contrastingly, critics of upholding short-term freedom-deprivation penalties underscore their myriad drawbacks. They propose either their elimination or substitution with alternative sanctions that effectively achieve the intended aims of punitive measures.⁴ The drawbacks associated with short-term freedom-deprivation penalties⁵ encompass various dimensions:

- Imposing short-term freedom-deprivation sanctions on individuals fails to provide an adequate window for the implementation of comprehensive rehabilitation and correctional programs. Such programmes necessitate substantial investment in terms of professional, psychological, and medical support resources that short-term prison sentences might lack.
- Primarily, short-term freedom-deprivation sanctions are inherently inadequate for accomplishing both general and specific deterrence goals. They can trigger adverse outcomes such as severing familial ties, eroding personal honour and reputation, and jeopardising future prospects. Furthermore, these penalties expose offenders to contact with hardened criminals, facilitating the exchange of criminal knowledge. This exchange can contribute to a surge in criminal activity in contemporary society.⁶
- The adverse consequences of liberty deprivation penalties extend well beyond the confines of the convicts themselves and reverberate through their families. Especially impactful are the psychological and economic challenges faced by the families of inmates, particularly when the incarcerated individual is the family's primary provider. Children, in particular, undergo emotional deprivation, security loss, and the absence of nurturing affection vital for sound emotional growth. This scenario fosters frustration, anxiety, and psychological strain within the family unit. Furthermore, family members may harbour resentment towards the offending individual, exacerbating strained relationships.⁷
- The financial strain on state budgets arising from prison construction expenses and related costs is substantial. Economically disadvantaged nations often bear this burden, compounded by the annual upsurge in the convict population. The crux of the problem rests in a system that overlooks supply and demand dynamics. Courts issue a considerable number of verdicts without assessing the capacity of existing prisons to accommodate the influx. This issue frequently burdens the executive authorities tasked with constructing new correctional facilities.
- Yet another critical drawback of deprivation penalties is the decline and erosion of the intellectual prowess of inmates, particularly if the individual was once an intellectual or a scholar. Interactions with intellectually underdeveloped or morally compromised inmates can be detrimental, potentially leading to negative influences and emulation.

1-2 The Ineffectiveness of the Penal System in Attaining Its Goals

Numerous legal scholars and researchers have recognised the waning efficacy of correctional institutions in fulfilling their foundational mandates, which encompass rehabilitation, reform, and the reduction of criminal activities. This realisation underscores the actual potential of imprisonment to fuel criminal behaviour, disproportionately impacting newcomers with corrupting influences rather than facilitating genuine rehabilitation. The limitations of incarceration become evident when addressing the deeply ingrained criminal proclivities of habitual offenders.

Consequently, a substantial body of legal experts has raised poignant inquiries into the efficacy of imprisonment as a punitive measure, advocating for its substitution with alternative strategies. These alternatives, designed to divert convicted individuals from the criminal environment, prioritise rehabilitation while curbing recidivism.

Empirical data and scholarly investigations accentuate the transition of many "crimes of opportunity" into professional criminal endeavours over time. To illustrate, a notable 29% of individuals initially engaged in minor ethical misdemeanours evolve into theft-related offenses. Among this subset, a further 29% escalate their criminal involvement to encompass drug-related activities, including drug trafficking. Notably, a distinct 40% of those initially linked to murder charges pivot towards committing theft.⁸

Moreover, corroborating evidence from diverse studies and statistics underscores a surge in recidivism rates worldwide. In the United Kingdom, recidivism has surged to 56%. Comparable trends are observable in South Africa, where around 2000 individuals re-enter correctional facilities upon release. In the Czech Republic, out of 2419 individuals, there were reported cases of returning prisoners in 2011. Another comprehensive study conducted by Dr. Islam Abdullah El-Ghani Ghanem across select Arab nations, including Tunisia, Egypt, and Jordan, verified an average recidivism rate of approximately 24% among inmates within these facilities in 2014.

2- Section II: Penalties and Measures Encompassed within Algerian Legislation and Their Viability as Alternatives

Article 05 of the Law governing Prison Regulations and the Social Reintegration of Detainees, promulgated on February 6, 2006, mandates that the prison administration be tasked with the implementation of custodial sentences, security measures, and alternative sanctions as defined by the law. This provision explicitly underscores the Algerian legislature's commitment to incorporating alternative sanctions, initially introduced through the law dated February 25, 2009. Moreover, the Prison Regulation Law encompasses a range of penal mechanisms executed beyond the confines of the prison, including parole, semi-liberty, and conditional release.

- Public Service Work Penalty:

An amendment to the law enacted on February 25, 2009, introduced the public service work penalty. This amendment conferred the authority upon judges to substitute short-term imprisonment with this penalty as part of the emerging criminal policy aimed at fortifying human rights principles and realising the reintegration of incarcerated individuals. This substitution is contingent upon meeting the following conditions:⁹

- Absence of a previous criminal record for the accused
- The accused must be at least 16 years old at the time of committing the offence.
- The penalty for the offence committed must not exceed a three-year prison term.
- The imposed penalty must not exceed one year.
- The duration of public service work ranges from 40 to 60 hours, computed at two hours for each day of imprisonment.
- For juvenile offenders, the duration of public service work must not be less than 20 hours and should not surpass 300 hours.
- The judge effectuates the substitution of the imprisonment penalty with the public service work penalty upon the consent of the convicted individual.

Upon the convicted individual's acceptance and the finalisation of the judgement, the penalty judge summons the convicted person and assigns them tasks that align with their health condition, educational qualifications, professional background, and social circumstances. These assigned tasks are in accordance with legislative and regulatory guidelines related to work.

The penalty judge retains the authority to issue a decision to suspend the application of the public service work penalty if social, health, or familial conditions arise that hinder the convicted's ability to perform the assigned tasks.

In cases where the convicted individual fails to fulfil their obligations without justifiable cause, the customary procedures for implementing the originally sentenced imprisonment penalty will be invoked.

The adoption of the public service work penalty as an alternative to short-term imprisonment epitomises the principle of individualised sentencing and the careful selection of appropriate measures that resonate with the offender's character and prospects for rehabilitation. This approach seeks to minimise reliance on coercive measures that could subject them to detrimental influences within the criminal milieu. By doing so, it shields them from the adverse effects of the penal environment that might otherwise strain their interpersonal relationships and societal integration.

Implementing this alternative not only enables convicted individuals to maintain family connections but also empowers them to honour professional and personal commitments, safeguarding their dignity and reputation.¹⁰ Furthermore, it has additional favourable outcomes, notably in ameliorating prison overcrowding and mitigating the substantial costs associated with inmate detention.

- **Monetary Fine:**

In numerous instances, the legislative framework of penal codes designates the imposition of a monetary fine as the sole penalty for misdemeanours and violations. The discretion bestowed upon judges to choose between imprisonment and fines is explicitly outlined in various articles that employ the phrase "or either of these penalties". Notable illustrations of this practice can be observed in Article 53-bis-4 of the same legislation, which pertains to mitigating circumstances. This provision specifies that if a convicted individual lacks a prior criminal record and the misdemeanour article prescribes either imprisonment or a fine, the judge is vested with the authority to pronounce either of these penalties. In scenarios where the prescribed penalty exclusively consists of imprisonment, the judge is empowered to substitute it with a monetary fine. This substitution is valid as long as the fine ranges from a minimum of 20,000 DZD to a maximum of 500,000 DZD. Similar provisions are mirrored in Articles 144, 144-bis, 160-bis, 7, 236, 224, 449, 243, 244, 246, 298, 303, 444, and various other articles within the penal code that confer the prerogative to render a verdict exclusively imposing a fine.

- **Partial Suspension of Imprisonment**

The partial suspension of an imprisonment penalty authorised by judicial authorities constitutes an alternative approach to the execution of custodial penalties.

As outlined in Article 592 of the Criminal Procedure Code, courts and councils are empowered to apply either a complete or partial suspension of a prison sentence along with a fine, given that such a decision is warranted in the context of the verdict.

This mechanism serves as a viable strategy to circumvent full or partially suspended term of imprisonment, aligning with the overarching goal of utilising alternative penalties.

- **Measures for the Protection and Rehabilitation of Juvenile Offenders:**

The fundamental approach to addressing juvenile offenders involves the implementation of protection¹¹ and rehabilitation measures. Article 35 of Law No. 15-12, enacted on July 15, 2015, pertaining to child protection, specifically prohibits the imposition of one or more protective or rehabilitative measures on individuals under the age of 18 who have engaged in felonies and misdemeanours. These measures encompass a range of interventions, including:

- Placing the child under the care of their family.
- Entrusting the child to a parent who does not hold custody rights, unless such rights have been revoked.
- Implementing supervised release.
- Handing the child over to a relative.
- Entrusting the child to a reliable individual or family.
- In certain cases, authorities have the discretion to assign the child's supervision to appropriate institutions, such as family, educational institutions, or vocational schools.

Furthermore, Articles 56, 57, and 58 of the same law delineate the specific measures that are applicable to children based on their age when they commit offences. These provisions ensure that the responses to juvenile offences are tailored to the individual circumstances and developmental



stages of the young offenders, aiming not only for accountability but also for their overall well-being and reintegration into society.

- **Judicial Supervision:**

The concept of judicial supervision inherently serves as an alternative to pretrial detention, as stipulated in Article 125 of the Criminal Procedure Code. This article grants the investigating judge the authority to impose judicial supervision on the accused under specific conditions, including their commitment to appear before the judicial authorities.

Some may argue that judicial supervision is not truly an alternative penalty but rather a procedural aspect of the investigation. In response, we assert that its incorporation into the legal framework aims at circumventing the need for imprisonment. When effectively employed as intended by the legislator, judicial supervision holds the potential to spare a considerable number of defendants from pretrial detention. Subsequently paving the way for them to receive a short-term deprivation of liberty punishment or even, in some instances, acquittal.

It is important to emphasise that the legislative intent regards judicial supervision and pretrial release as the norm, with pretrial detention reserved as an exceptional measure, employed only when the obligations associated with judicial supervision prove inadequate. This perspective underscores the legislative preference for non-custodial alternatives and the effort to strike a balance between safeguarding the rights of the accused and ensuring the proper administration of justice.

- **Conditional Release:**

Conditional release, as outlined in the Law on Prison Regulation and Social Reintegration of Detainees, emerges as a substantial alternative to incarceration. As defined in Article 134 of the aforementioned legislation, a detainee who has completed the probation period and demonstrated exemplary conduct,¹² exhibited significant assurances of their rehabilitation, and fulfilled judicial expenses and civil compensations, unless waived by the civil party, is eligible for conditional release.

In accordance with these provisions, a convicted individual who has served half of the sentence for first-time offenders or two-thirds of the sentence for repeat offenders can fulfil the remaining portion of their sentence beyond prison walls, abiding by specific obligations that curtail their activities in line with societal norms. Article 148 of the prison regulation law further extends the provision by exempting prisoners with severe illnesses or permanent disabilities incompatible with detention from the probation period requirement, enabling their conditional release due to health grounds.

Evidently, conditional release, although an extension of the sentence duration, affords the convicted individual the opportunity to serve the remaining portion of their sentence within the community.

- **Electronic Monitoring: A Modern Approach to Implementing Short-Term Custodial Penalties**

The electronic monitoring system presents a modern method for executing short-term custodial sentences outside traditional prison walls, commonly known as "house arrest". This innovative strategy enables individuals subject to such penalties to remain confined to their homes, with their movements closely monitored through a device resembling a wristwatch or ankle bracelet. Termed the "electronic bracelet", this concept has been embraced by experts in the field of criminal justice. Variations such as "electronic tagging" and "electronic supervision" have emerged to define this practice, all converging towards a shared objective.

At its core, electronic monitoring employs technological means to ensure the compliance of monitored individuals with predetermined locations and timeframes mutually agreed upon by these individuals and the relevant judicial authorities. In essence, electronic monitoring functions as an alternative method of executing custodial penalties beyond conventional prison confines. This approach may be employed as a provisional measure during the pretrial phase or as a substitute for traditional custodial sentences. Those subject to electronic monitoring are required to remain within their homes during specific hours determined by the court, wearing an electronic bracelet

on their ankle. Any deviations from the designated area trigger an immediate alert to the monitoring agency.

Within Algerian legislation, electronic monitoring is established as a procedural mechanism facilitating either partial or complete sentence execution outside correctional facilities. Practically, this entails wearing an electronic bracelet for the stipulated period, allowing the supervision of an individual's presence Within the designated residential area, as defined by the presiding judge's order.

The United States played a pioneering role in integrating electronic monitoring into its penal systems, formally adopting this practice in 1980, with its initial implementation in 1987 in Florida. In the U.S. legal framework, electronic monitoring serves as an alternative to incarceration,¹³ an integral aspect of probationary obligations, and a replacement for pretrial detention. Over time, this approach evolved, benefiting approximately 100,000 inmates exclusively within the United States.

In the European context, the United Kingdom introduced electronic monitoring in 1989, and its positive impact has now reached around 60,000 inmates. Subsequently, this practice gained prominence in the majority of European penal systems, including Sweden in 1994, the Netherlands in 1995, and Belgium and France in 1997.

As an example, France integrated electronic monitoring into its legal framework through Law No. 97-1159, which was ratified on December 19, 1997. This integration was further supplemented by Law No. 2000-516 on June 10, 2000. Within French legislation, specific articles, namely 723-7 to 723-14, were designated to solidify electronic monitoring as an innovative mechanism for implementing custodial penalties beyond the confines of traditional incarceration settings.¹⁴

CONCLUSION

Despite considerable criticism directed at alternative penalties for their perceived failure to achieve the deterrence objective of punishment, these penalties remain a more viable option for convicted individuals when compared to the disadvantages and adverse outcomes associated with custodial sentences executed within correctional facilities. Conversely, alternative penalties contribute to rehabilitating offenders by removing them from criminal environments while also serving as safeguards to protect human rights. The integration of such alternatives into our legal system was imperative due to the economic and social advantages they bring. These measures assist a wide range of first-time and non-dangerous offenders in maintaining their social connections, families, and external networks, thereby minimising the risk of recidivism. Furthermore, these alternatives align with the requirements of re-education and social reintegration methods while simultaneously alleviating prison overcrowding and relieving the financial strain on public funds.

However, the successful implementation of these new mechanisms hinges on the active involvement of stakeholders. It necessitates a genuine commitment to applying these legal provisions, and this endeavour is contingent upon the practical enactment of legislation.

The introduction of new alternatives could potentially eliminate the drawbacks of short-term custodial sentences or safeguard a significant segment of first-time and non-threatening offenders, allowing them to maintain stability within their social environments, families, and professions. This would mitigate the risk of criminal influence and relapse.

Observing the reality of crime in Algeria, it's evident that the majority of offenders are youth under the age of 30, often involved in minor crimes. The most prevalent penalty is short-term imprisonment, typically not exceeding one year. These realities are bolstered by positive shifts in Algerian society across social, cultural, and economic dimensions, rendering it more receptive to modernization and embracing globally recognized scientific advancements.

Among the proposed measures and recommendations to transform them into alternatives to imprisonment, the following are noteworthy:

1. Expanding the Scope of Suspended Fines and Imprisonment: Utilising suspended fines and imprisonment as primary penalties could effectively deter infractions and minor offences. These

could be complemented by additional punitive measures that restrict economic, social, or cultural activities if warranted. Adjusting both the minimum and maximum fine limits is essential to enable judges to tailor fines based on individual circumstances.

2. **Restitution and Compensation:** This measure could be particularly effective in cases involving minor theft or property damage. Offenders could return stolen or damaged items or their equivalent value, thus eliminating the need for custodial punishment.

3. **Driving Licence Suspension:** This penalty could serve as a substitute for imprisonment, especially in cases of accidental injuries or fatalities resulting from traffic accidents.

4. **Prohibition of Chequebooks and Payment Cards:** This penalty is more fitting for cases of bounced checks when the defendant settles their debt before public prosecution or if the sum is minimal and the defendant takes proactive steps to settle the due amount.

5. **Professional Activity Prohibition:** Imposing a prohibition on engaging in a specific professional activity related to the criminal act could substitute for imprisonment, particularly when the offence is tied to the defendant's professional role. This could be coupled with a fine if necessary.

6. **Widening the Scope of Mediated Settlements in Criminal Prosecution:** Expanding this approach could encompass a substantial array of crimes where parties during the dispute opt for a mediated settlement, ending criminal proceedings and negating the need for some offenders to serve prison sentences. This approach aligns with our society's values of reconciliation, tolerance, and respect for familial and peer advice. Such moral values are worthy of encouragement for the sake of social cohesion. This approach is especially relevant to crimes that do not inherently pose severe danger, such as property trespass, minor check-related offences, breaches of trust, and altering boundaries, among others. In closing, these suggestions aim to contribute ideas to specialists regarding alternatives to custodial penalties. These suggestions have the potential to streamline judicial processes by establishing alternative options that fulfil the punitive objective without imposing psychological and social disadvantages on individuals who may have inadvertently strayed towards criminal behaviour. Moreover, these alternatives resonate with the high moral values of our society, rooted in the teachings of the Quran, as evidenced by verses like "And if two factions among the believers should fight, then make settlement between the two" (Quran 49:9) and "The believers are but brothers, so make settlement between your brothers" (Quran 49:10). Indeed, numerous examples of dispute resolution can be found in the lives of Prophet Muhammad (peace be upon him) and his righteous predecessors.

7. **Exclusion from Public Contracts:** This measure could serve as an alternative to custodial punishment when it is proven that a contractor or company engaged in fraudulent activities related to the assigned tasks or that the crime is contractor-related.

In conclusion, enriching our legal system with alternatives to custodial penalties is not just necessary; it holds significant economic and social benefits. These alternatives assist a broad array of offenders in maintaining their ties to families and external circles in harmony with re-education and social reintegration efforts. They mitigate the risks of criminal recidivism, help alleviate prison overcrowding, and reduce the financial burden on the treasury. These alternatives provide an effective and modern response to the challenges of traditional punitive methods.

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