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Community Service Provisions as an Alternative Punishment in Jordanian Legislation

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Abstract

This study presents a comprehensive analysis of community service punishment provisions in the Jordanian Penal Code compared to the practical provisions followed in the state of California, derived from the California Penal Code, system, and constitution. By employing a legal analysis approach alongside an extensive review of relevant literature and real-life case studies, we sought to gain deeper insights into the impact of community service penalties in Jordan compared to their impact in California. This, in turn, will positively contribute to improving the procedures followed in Jordanian law in the future by providing a legal reference that assists Jordanian legislators during future amendments to the Penal Code. This effort will encourage judges to widely apply these penalties, especially since they have proven effective in reality in reducing recidivism rates and improving the behavior of offenders who have served community service penalties. The study will also refer to the content of several interviews conducted with individuals responsible for drafting the legal provisions related to community service penalties in Jordan and the judges responsible for applying these laws in Jordanian courts, in order to provide a better realistic and practical perspective on the Jordanian experience in this regard.

Keywords: Community Service, Alternative Punishments, Rehabilitation, Recidivism Reduction.

Introduction

Many modern criminal legislations, including Jordanian legislation, have adopted community service as an alternative punishment to short-term imprisonment. The Jordanian legislator first adopted it through the recent amendment to the Criminal Events Law No. (32) of 2014, which applies to criminal events. Paragraph (c) of Article (24) of this law granted the Criminal Events Court the authority to impose alternative penalties on the offender, including the obligation of community service for public benefit in one of the public utility facilities or in one of the voluntary civil society institutions, for a duration not exceeding one year, as stated: “...the obligation of community service for public benefit in one of the public utility facilities or in one of the voluntary civil society institutions, for a duration not exceeding one year.”

Then, community service sanction was added by virtue of Article (/1/25 repeated) of the amended Jordanian Penal Code No. (16) of 1960, which stated: “In misdemeanor cases and based on the social report, excluding repetitive cases, the court may rule, up to the final verdict, one or more of the following alternatives: a) Community service: The convicted individual shall be obliged, with their consent, to perform unpaid work for the benefit of the community, for a

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duration determined by the court, not less than (40) hours and not exceeding (100) hours, to be executed within a period not exceeding one year.”

The Jordanian legislator has adopted community service sanction to reduce the rate of recidivism and has given it a prominent role in crime reduction and its impact on the lives of the convicted individuals. Security statistics revealed an increase in the number of repeat offenders, reaching a proportion of 33% of crime perpetrators. Additionally, this punishment has been resorted to due to the rising crime rates in Jordanian society in recent years, both in terms of the volume of crimes and their patterns of commission. Security reports also indicated an increase in the number of criminal offenses in Jordan since 2010, reaching 5,451 crimes in 2015, an increase of 1,261 crimes, and in 2018, the number of criminal offenses reached around 7,154 crimes, an increase of 1,703 crimes compared to the year 2...

The Jordanian legislator has also adopted community service sanction as a reinforcement to the fundamental principles of contemporary criminal policy, which is based on respecting human rights and facilitating the reintegration of the convicted individuals. This represents the legislator's goal of punishments: reintegration and rehabilitation.

Community service as an alternative punishment to short-term imprisonment means assigning the convicted individual, against whom a judicial sentence is issued, to perform an activity for the benefit of a community service organization instead of serving a short-term imprisonment. Therefore, it encompasses various forms of work, not limited to physical labor but also includes intellectual effort that the convicted individual can contribute to benefit the community. The Jordanian legislation, like all other legislations concerning community service sanction, has established a set of conditions and procedures that must be followed before applying this penalty. The implementation of community service goes through objective and subjective considerations, and there are both legal consequences that result from its execution and others that result from its non-execution.

Problem Statement

This study addresses the challenges associated with implementing community service as an alternative punishment within the Jordanian legal framework. Despite the recent amendments to the Penal Code that introduced community service, several issues hinder its effective application. Firstly, legislative gaps exist because the current legal text includes misdemeanours and felonies but fails to clearly specify violations, leading to ambiguity in the application of community service for certain offenses. Secondly, the lack of established monitoring mechanisms complicates the enforcement of compliance and accountability for individuals sentenced to community service. Additionally, the requirement for the convicted individual's consent provides practical challenges, especially in cases involving multiple defendants, where some may agree to community service while others do not, creating inconsistencies in sentencing. Lastly, the obligation for minors aged twelve to fifteen to perform community service raises concerns about the suitability and effectiveness of this penalty for young offenders. This research aims to identify and analyse these challenges, ultimately providing recommendations for improving the implementation of community service as a viable alternative to incarceration in Jordan.

This study is significant for several reasons. First, it contributes to the ongoing discourse on alternative punishments in Jordan, particularly in light of rising crime rates and the need for effective rehabilitation strategies. By addressing the challenges associated with community

service, the research aims to provide valuable insights that can guide legislative amendments and judicial practices. Furthermore, the findings may help enhance the understanding of community service's role in reducing recidivism rates and promoting social reintegration for offenders. Ultimately, this study seeks to foster a more effective and just penal system that aligns with contemporary principles of human rights and rehabilitation.

Study Questions

1. What are the specific legislative gaps existing in the current provisions for community service in the Jordanian Penal Code?
2. How effective are the current mechanisms for monitoring individuals sentenced to community service, and what improvements are needed?
3. What challenges arise from the requirement for consent from convicted individuals for community service, especially in cases with multiple defendants?
4. How appropriate is community service as a penalty for juvenile offenders aged twelve to fifteen, and what are its implications for their rehabilitation?
5. What best practices from other jurisdictions can be applied to enhance the implementation of community service as an alternative punishment in Jordan?
6. How does the application of community service impact recidivism rates among offenders in Jordan?
7. What recommendations can be made to policymakers to improve the legislative framework governing community service?

Study Objectives

1. To analyse the current legal provisions related to community service in the Jordanian Penal Code and identify gaps and ambiguities that may hinder effective implementation.
2. To evaluate the existing mechanisms for monitoring individuals sentenced to community service and suggest improvements to enhance accountability and compliance.
3. To explore the implications of requiring consent from convicted individuals for community service, particularly in cases involving multiple defendants, and suggest strategies for managing these complexities.
4. To evaluate the effectiveness and appropriateness of community service as a penalty for young offenders aged twelve to fifteen, considering their developmental needs and rehabilitation potential.
5. To provide actionable recommendations for policymakers and legal practitioners to improve the application and effectiveness of community service as an alternative punishment in Jordan.

Importance of the Study

This study holds significant importance for multiple reasons. First, it contributes to the ongoing discourse on alternative punishments in Jordan, particularly in light of rising crime rates and the need for effective rehabilitation strategies. By addressing the challenges associated with community service, the research aims to provide valuable insights that can guide legislative

amendments and judicial practices. Furthermore, the findings may help enhance the understanding of community service's role in reducing recidivism rates and promoting social reintegration for offenders. Ultimately, this study seeks to foster a more effective and just penal system that aligns with contemporary principles of human rights and rehabilitation.

Methodology

In this research, two legal research approach will be used, namely, the Comparative approach, Analytical and Critical Approach. The comparative approach was used to compare the provisions of the community service sanction in the Jordanian Penal Code, with the provisions and program applied in California in the community service sanction. As for the analytical and critical approach, it will be used in the criticism and analysis of the applicable legal texts, Judicial decisions issued by Jordanian courts, California courts.

Comparative Approach

The content of comparative law is to compare the law of one country with the law of another country, more than two laws can be compared. The basis of comparison is to know the extent of similarities and differences between the legal data between the two countries.

Glenn explained the objectives of comparative law as follows:

1. Learn and know information about comparative law in a different place in order to better understand local law.
2. Comparative law is a tool for the science of evolution and classification, through the knowledge of asynchronous changes and co-evolutions.
3. Better understand an individual's legal system and use it as a means to interpret the constitution.
4. Harmonization of Law There are many ideologies underpinning comparative law to this day, which Glenn criticizes.

Analytical and Critical Research Analysis

This research will analyze the legal provisions in order to know the strengths and weaknesses of the provisions in the law. Several reforms will be proposed to the legal rules making improvements in order to best implement the community service sanction.

Objective Conditions for Community Service Sanction in Jordanian Legislation.

The ruling of community service as an alternative punishment to short-term deprivation of liberty requires certain objective conditions. These conditions are related to the criteria specified by the Jordanian legislation, which the judge can consider based on the investigation of the case in which the ruling of community service is applied, whether it pertains to the crimes committed or the duration of the imprisonment that the judge can replace.

In light of the above, to understand the objective conditions of community service sanction in the Jordanian legislation, we will divide this chapter into two sections as follows:

- a. Conditions related to the crimes for which community service sanction is imposed.
- b. The duration of the imprisonment that the judge can replace with community service sanction.

c. That the penalty be for the public benefit and not for the benefit of the convict.

Conditions Related to the Crimes for Which Community Service Sanction is Imposed

The Jordanian penal legislation has established conditions for community service sanction based on the gravity of the offense, whether it is classified as a felony, a misdemeanor, or a violation. Crimes in the Jordanian Penal Code are categorized according to their severity, the prescribed punishment, and their impact on society into three types: felonies, misdemeanors, and violations. Article (55) of the Jordanian Penal Code No. 16 of 1960 and its amendments state that: "The offense shall be a felony, misdemeanor, or violation, according to the punishment imposed for it as a criminal, misdemeanor, or violation."

Article (14) of the same law covers felonies, while violations are addressed in Article (15), and misdemeanors are stated in Article (16) of the same law. Felonies are the most severe crimes, misdemeanors are less serious than felonies, and violations are considered the least serious offenses.

From this perspective, a crime in Jordanian law is considered a felony if it is punishable by one of the following criminal penalties:

- Capital punishment.
- Life imprisonment.
- Perpetual detention.
- Temporary hard labor.
- Temporary detention.

On the other hand, a crime is considered a misdemeanor if it is punishable by imprisonment or a fine. As for violations, they are crimes punishable by corrective imprisonment and a fine.

The majority of criminal legislation sets objective conditions for punishment for the applying of community service sanction, where it stipulated that the punishment be a misdemeanour the penalty shall not exceed three years. The Jordanian legislator did not specify this in the text of Article 25 bis of the Jordanian Penal Code No. 27 of 2017.

Upon reviewing the provisions of Jordanian Juveniles Law No. (32) of 2014, it becomes evident that the community service sanction can be applied to a boy who has reached the age of fifteen and has not yet turned eighteen, provided that he commits a misdemeanor punishable by a penalty of no more than six years. Similarly, the community service sanction can be applied to a teenager who has reached the age of twelve and has not yet turned fifteen, in the case of committing a felony or misdemeanor punishable by a penalty of no more than two years.

Article (/25d) of the Juvenile Law states: "If a youth commits a misdemeanor punishable by imprisonment, they shall be placed in a juvenile rehabilitation center for a period not exceeding one-third of the prescribed penalty in the Penal Code."

Furthermore, Article (/25h) of the same law states: "If mitigating reasons are present, the court may replace any penalty stipulated in paragraph (d) of this article with any of the measures specified in Article (24) of this law."

Article (/26j) of the same law states: "If a teenager commits a felony punishable by temporary hard labor or imprisonment, they shall be sentenced to be placed in a juvenile rehabilitation

center for a period not less than one year and not exceeding three years. If the court finds mitigating reasons, it may replace the penalty with any of the measures specified in Article (24) of this law."

As for Article (/26d) of the same law, it states: "If a teenager commits a misdemeanor, the court shall decide on any of the measures specified in Article (24) of this law in the case."

Therefore, the Criminal Court of Amman ruled: "... the defendant is guilty of theft, as per the provisions of Article (401) of the Penal Code and Article (26/j) of the Events Law. He is sentenced to one year in a rehabilitation center for juveniles, with the duration of pretrial detention being taken into account. The court considers waiving personal rights as a mitigating factor. Considering that Article 4 of the Events Law mandates the consideration of the best interest of the juvenile, their protection, rehabilitation, and care when applying the provisions of this law, and since the court finds that the defendant (full name initials) falls under the category of adolescents, the court decides, pursuant to Article (26/j) and Article (24/j) of the Events Law, to replace the above sentence with community service for the public benefit. The defendant shall perform 20 hours of community service at the Sana'bil Al-Khair Society - Oman.

Based on the provisions of the Jordanian Penal Code, Law Number 16 of 1960, and its amendments, it is evident that the alternative punishment of community service may be applied in cases where the sentence is for a felony, except for felonies committed against individuals, or for misdemeanors where the punishment does not exceed one year. Article (2/25 repeated) of this law states: "In felonies other than those committed against individuals, and except in cases of repetition, when using mitigating reasons and reducing the sentence to one year, the court may replace the prescribed punishment based on the social status report with one or more of the alternative non-custodial punishments provided for in paragraph (1) of this article."

From the above provision, it is evident that the Jordanian legislator has specified the crimes for which the punishment of community service may be imposed. It applies to felonies (excluding felonies committed against individuals) and misdemeanors. Therefore, the judgment of community service is permissible for all felonies except those committed against individuals, provided that there are circumstances that warrant mitigation and reduction of the sentence to one year, such as excuses and mitigating conditions. It is also permissible for all misdemeanors. This is because the Jordanian legislator does not consider the classification of the crime as a felony, misdemeanor, or violation; rather, the key factor is the length of the punishment that the judge imposes, which is imprisonment or detention for a period not exceeding one year.

It is also evident that the Jordanian legislator has exempted those convicted of violations from being subject to the sanction of community service. It has been argued that the justification for the Jordanian legislator's exemption of violations from being subject to the punishment of community service is that most violations are subject to fines that the convicted person may not find burdensome to pay. However, this legislative stance is not supported by jurisprudence, as there is a category of violations that are punishable by imprisonment. Moreover, imprisonment may be substituted for the fine if the convicted person is unable to pay it, which highlights the drawbacks of short-term imprisonment, putting the person convicted of a violation in a worse position than someone convicted of a misdemeanor or felony.

The researcher urges the Jordanian legislature to subject offenders of all violations to community service as a sanction, considering the relative indication of their lack of criminal inclination. They are more deserving of care to keep them away from the corrupt atmosphere in correctional

It is worth noting that there are some legislations that exempt certain crimes from being sentenced with community service, even when the conditions related to it are met. Crimes are categorized into two main types based on their severity: the first includes serious crimes, and the second includes less serious or minor offenses. Based on this classification, alternative penalties, including community service, can be imposed for the latter group, while imprisonment is reserved for the former. Implementing this principle would not be acceptable in practice.

Furthermore, the Dutch courts do not apply community service as a sanction for crimes with severe physical or psychological effects on the victims, such as rape. This means that the Dutch legislator has denied the convicted individual this privilege, even if they deserved it based on the duration requirement or other factors, as long as they committed a crime from this category. This is not only due to the seriousness of these crimes but also because of the social and psychological impacts they leave on society. As for the victims, this is a matter that the society should not tolerate any leniency towards the perpetrators.

The reason for not allowing the judge to replace custodial sentences with community service, even if the required conditions for the crime and punishment are met, is that the criminal justice system should send a meaningful and necessary message that society will not tolerate such types of crimes due to their impact on societal and individual security. Granting such privileges in these cases is not appropriate.

The reason for requiring a short-term penalty for deprivation of liberty, in most of the legislation that has adopted this penalty, community penalties are calculated by hours. Therefore, it is directed to accidental criminals who commit crimes coincidence or by accident. Therefore, it does not apply to habitual offenders.

The Duration of the Sentence That the Judge May Replace with the Penalty of Community Service

The Jordanian legislator has specified the duration of the custodial penalty, which the judge may sentence, and then replace it with community service, for a period not exceeding one year. Article (/1/25A repeated) of the Jordanian Penal Code No. (16) for the year 1960 as amended states: "Community service: is the obligation of the convicted person, with his consent, to perform unpaid work for the service of the community for a period determined by the court, not less than (40) hours and not exceeding (100) hours, to be executed within a period not exceeding one year."

The judge has an obligation to limit the length of the convict's work must be carried out clearly in his judgment. His decision is subject to the oversight of the Court of Cassation. If the period is against the law, it can be appealed to the Jordanian Court of Cassation.

The sentence period should be short and not long so that the convict can do other work to provide for his family's needs. The researcher supports this view because it would have a positive impact on the convict. He feels that he is able to provide for his family, At the same time, he must carry out the penalty imposed on him, feels that he is an active member of society, He does not need anyone's help to provide for his basic needs, this contributes to reform of the convict.

the position of the Jordanian legislation regarding the discretionary power of the judge concerning the duration of the community service sanction, community service is subject to the principle of the legality of crimes and punishments, which states that the penalty must be

predetermined in the legislative text to safeguard individual freedoms.

This determination sets two limits for the penalty, one minimum and the other maximum, as a general principle. However, the death penalty and life imprisonment are exceptions to this rule. The majority of comparative legislations tend to specify the duration of the work assigned to the offender within certain limits and set a deadline for completing the work. Regarding the duration of the community service in Jordan, the legislator has set it between (40) to (100) hours for adults, and the court has the discretion to determine the specific hours within this range based on the individual circumstances and the gravity of the crime committed. The court should also take into account the personal situation of the convicted person and the circumstances surrounding the crime.

In this regard, Article (/1/25A repeated) of the Jordanian Penal Code No. (16) of 1960, as amended, states: "Community service is the obligation of the convicted person, with their consent, to perform unpaid work for the service of the community for a duration determined by the court, not less than (40) hours and not exceeding (100) hours, to be executed within a period not exceeding one year." Furthermore, the Jordanian legislator has not adopted any specific criteria for distributing the hours of community service. Instead, the discretionary power is left to the judge to allocate the hours within a maximum duration of one year. This distribution should consider the circumstances, qualifications, and leisure time of the convicted person, as well as the conditions of the institution where the community service will be performed, the availability and type of work, and its suitability to the qualifications of the convicted person.

As for the Jordanian Juvenile Law No. (32) of 2014, Article (/24j) states: "The obligation to perform community service for the public benefit in one of the public utility facilities or one of the voluntary civil society institutions for a duration not exceeding one year."

That the penalty be for the public benefit and not for the benefit of the convict:

Punishment should be applied in public institutions; such institutions shall be determined by law, or determined by the Minister of Justice in agreement with the Minister of Social Development. Therefore, this work may not be for the benefit of a private company or entity, even if it achieves a public benefit, this condition is consistent with the provisions of the Constitution, as convicts may not be hired for the benefit of private companies. Therefore, work is required for public benefit and without compensation; this penalty must not be official, where it may not involve unhelpful or unnecessary work.

Personal Conditions for Community Service Sanction in Jordanian Legislation

To be a natural person and not a legal/Artificial person

the concept of legal personality can refer to either a natural person or to artificial (juridical) personality. The latter is defined as: "A group of individuals or assets established to achieve a specific purpose, and the law grants this juridical personality to achieve that purpose. The law determines the juridical personality and the process of acquiring it."

It is worth noting that the legislative intent in criminal laws is directed towards addressing natural persons, not juridical persons, especially in cases of capital punishment and freedom-depriving penalties. Such penalties cannot be applied to a juridical person.

Based on the preceding, Article 74/3 of the Jordanian Penal Code No. 16 of 1960, as amended, stipulates that: "Juridical persons shall be subject to fines and confiscation only. If the law

prescribes a primary penalty other than a fine, the fine shall be substituted for the mentioned penalty. This applies to juridical persons within the specified limits in Articles 22 to 24 of this law.”

Applying freedom-depriving penalties to a juridical person is futile, as it does not serve the fundamental purposes of punishment, which include reforming the convicted entity, rehabilitating it, and reintegrating it into society. These objectives can only be achieved in relation to a human being who possesses will and conscience. This is what renders the application of penalties beneficial for assessment and rehabilitation.

the Jordanian legislation applies the community sanction penalty exclusively to natural persons, not juridical persons. Furthermore, it is equal in its application to both male and female natural persons, as well as to adult criminals and juvenile delinquents. The community service sanction is imposed on both young individuals and adolescents.

The person must be able to perform the work assigned to him

Some jurisprudence scholars argue that it is a requirement for the convicted individual - even if not explicitly stated in criminal law - to be capable of performing the action for which they could be sentenced and assume responsibility for it. This, in turn, necessitates that the convicted person is not afflicted with an illness that prevents them from carrying out the action or that they do not pose a danger to others who are involved.

This means that it is a requirement for the convicted person not to be afflicted with a contagious disease that poses a risk to other individuals working with them. Therefore, they are obliged by law to disclose such a condition, as the law mandates, or else they could be held accountable.

the convicted person must not be a recidivist.

A recidivist criminal is, every person who has been convicted by a final judgment of a felony or misdemeanour with a penalty short term, in this case, the person is considered a habitual criminal. If he is a recidivist criminal, the community service sanction cannot be applied against him, without prejudice to the rules of recidivism. The convict shall not be considered a recidivist criminal if he is sentenced to a fine. Also, if the convict is sentenced, then the sentence for reinstatement is handed down. He is not considered a recidivist criminal, because rehabilitation removes all traces of the criminal sentence.

The community service sanction requires that the convicted person not have previously been convicted of a crime, or even a perpetrator of multiple crimes. It is also necessary to determine whether it is highly likely that the crime will not be repeated, through an examination of their previous behavioral history and whether the offender has shown remorse for their actions, in addition to assessing their societal standing.

The Jordanian legislator has stipulated that the convicted person must not be a recidivist. Article (25 repeated) of the Jordanian Penal Code No. 16 of 1960, as amended, states: “In misdemeanors, and based on a social assessment report, the court may, except in cases of repetition, render a final judgment with one or more of the following alternatives: community service - which entails obligating the convicted person, with their consent, to perform unpaid service... In non-personal criminal cases, and except in cases of repetition, when utilizing mitigating circumstances and reducing the penalty to a year, the court may, based on a social assessment report, replace the prescribed penalty with one or more alternatives to freedom-depriving penalties stipulated in paragraph (1) of this article.”

Recidivism refers to “the individual's return to criminal behavior after being convicted of a prior crime and sentenced, with the assumption that their criminal behavior has been corrected.” It also refers to “the repetition of a crime by the offender after being previously punished for a prior crime, considering recidivism as a factor to enhance the severity of the penalty imposed on the offender due to their persistence in criminal activities and defiance of the law and public order in the Hashemite Kingdom of Jordan.”

This condition is derived from the fundamental idea prevailing in criminal legislation and criminal jurisprudence, which stipulates that the community service sanction is a privilege granted to a group of offenders who commit a crime for the first time, in order to divert them from the negative impacts of a short-term freedom-depriving penalty and prevent them from relapsing into criminal behavior again. It is not sufficient for the convicted individual to meet the necessary conditions for the implementation of the penalty; rather, they must also not be a recidivist in order for the community service sanction to be applied to them.

Recidivism in the Jordanian Penal Code refers to a situation where an individual who has been sentenced with a criminal penalty, whether it is a final judgment or not, commits a crime during the period of his sentence or within ten years after completing it or after the penalty has been lifted for any legal reasons, necessitating a temporary hard labor penalty or temporary detention. Article (101) of the Jordanian Penal Code No. 16 of 1960, as amended, states: “If a person has been sentenced with a criminal penalty, whether it is a final judgment or not, and commits a crime during the period of his sentence or within ten years after completing it, or after the penalty has been lifted from him due to one of the legal reasons:

A crime that warrants a temporary hard labor penalty or temporary detention shall have its duration increased by adding half of the penalty duration required for the second crime in the case of the first recurrence. In any subsequent recurrence, the same shall be added.

For a misdemeanor that entails a prison sentence, its duration shall be increased by adding half of the penalty duration required for the second crime in the case of the first recurrence. In any subsequent recurrence, the same shall be added.

To ensure that the convicted individual is not a recidivist, this is confirmed through their judicial record. If it is established to the judge that the convicted individual is not a recidivist, this may enable them to have the opportunity to substitute their penalty with community service.

Procedural Requirements for Community Service Sanction in Jordanian Legislation

The consent of the convicted person to the community service sanction

This condition is derived from the text of Article 25, repeated in the Jordanian Penal Code No. 16 of 1960, amended in 2022, which states the following: 'Community service: the convicted person, with his consent, is obliged to perform unpaid work... for a period not exceeding one year.

Therefore, the community service sanction cannot be applied to the convict without his consent, in order to express his satisfaction with this punishment. Because this punishment requires the convict to perform an act without payment, Therefore, his consent is the only guarantee for the proper implementation of this punishment and the achievement of public and private deterrence. This is stipulated in Article 4 of the European Convention on Human Rights on the prohibition of forced and compulsory labour.

This condition is the closest to common sense, because it is not reasonable to assign a person a job without expressing his consent to do, in order to ensure that it plays his role in reforming the convict, and deterring him from repeating this type of crime. It would have been more appropriate for the Jordanian legislator to grant the convict the right to demand the applying of the community service sanction to him if its conditions were met. But the legislator did not take this view, because the purpose of applying societal sanctions is to reform the convict and reintegrate him into society, this thing is decided by the judge when ruling these penalties.

As for juveniles, by examining the Juveniles Offenses Act No. (32) of the year 2014, we notice that paragraph (c) of Article (24) of this law granted the Juveniles Court the authority to impose alternative penalties on the juvenile, including the penalty of compulsory community service for public benefit in one of the public benefit facilities or in one of the voluntary civil society institutions for a period not exceeding one year, stating: "...the obligation of service for public benefit in one of the public benefit facilities or in one of the voluntary civil society institutions for a period not exceeding one year."

In the Jordanian legislation, when the court is required to ensure the convicted person's consent and acceptance of the community service sanction as an alternative to custodial penalty before imposing it, this consent possesses a distinct legal nature. On one hand, it is an obligation upon the court, which cannot disregard it. If it is neglected, it constitutes a defect in its judgment. On the other hand, the convicted person has two options: acceptance or refusal. Therefore, the court is not entitled to impose it upon the convicted person, nor is it valid for the court to blame or reprimand the person if they reject the offer and do not agree to it, choosing instead to undergo the custodial penalty.

In this way, the community service sanction becomes an optional punishment, giving the convicted person the right to either accept or reject it.

The court cannot pronounce it spontaneously; all it must do is present it to the individual before it and ensure their explicit consent that they accept to execute the custodial penalty outside the prison walls by performing community service instead of serving the custodial penalty within the penal institution. Otherwise, its judgment would be tainted with the error of law application, making it susceptible to appeal and subsequent annulment.

The judge should be diligent not only in verifying the convicted person's consent to the community service sanction, but also in ensuring that the consent is personally expressed by the convicted person themselves. The consent should originate from the convicted person directly, not through a representative. The judge cannot rely on the consent of the convicted person's lawyer, as this pertains to a task that the person will carry out themselves and is responsible for personally. They must complete it on their own, as they are the ones aware of their capabilities, and thus their ability to fulfill the obligations imposed upon themselves. Moreover, they understand the extent to which the community service sanction aligns with their social and psychological condition. It is possible that they may prefer imprisonment over performing a task they consider demeaning to their dignity.

The consent of the convicted person must be explicit and free from ambiguity. Silence on the part of the convicted person and failure to express an opinion when the court presents the option of substituting the penalty with community service should not be considered as acceptance, nor should it be taken as an indication of consent.

He must express a clear statement that leaves no room for ambiguity, indicating his consent, or

an equivalent action if he is unable to speak due to some impediment. In such cases, it is permissible to consider the customary gesture as a substitute for speech.

the obligation of the convicted person to attend the session for pronouncing the community service sanction.

The pronouncement of the community service sanction is not possible in all legislations that have adopted this penalty except in the presence of the convicted person. The convicted person must be present during the sentencing session, as it is mandatory for them to attend. There is no room for any other assertion, as eliciting the opinion of the convicted person and clarifying their acceptance or rejection requires their personal presence during the pronouncement of the judgment and their awareness of its content.

The reason behind the necessity of the convicted person's presence during the session for pronouncing the community service sanction stems from the consequences that result from it. These consequences include the potential refusal of the convicted person to substitute the custodial penalty with community service, as well as legal requirements that may mandate the delivery of the convicted person to the entity responsible for executing the penalty. For instance, if the penalty imposed is among those that the law requires to be executed directly, this cannot be left solely to the convicted person's discretion. They may delay or procrastinate in interacting with the entity responsible for implementing community service, especially if they accept the community service sanction.

The requirement for the convicted person's presence during the session for pronouncing the community service sanction entails that the verdict concerning the community service sanction follows the same rules as other verdicts. Specifically, the judgment must be issued in an open session. Even if trial sessions are conducted in secret according to the legislator's discretion for all verdicts, the other result of this is that the community service sanction cannot be pronounced or ruled upon in *absentia* verdicts or symbolic presence verdicts. This is due to a simple reason – in such cases, the court cannot ascertain the convicted person's opinion to express their consent or refusal to the penalty. While the law grants the court the authority to consider its verdict as a presence-based ruling if the summons was served to the accused individual and they did not provide a valid excuse for their absence, there is no room for the court to rule on the community service sanction in this case. The court cannot ascertain the person's stance, and moreover, they do not deserve this privilege because their actions render them unworthy of the care stipulated by the law.

The issuance of the community service sanction judgment after determining the duration of the custodial penalty.

Since the community service sanction is an alternative among the short-term custodial penalties, it is a requirement that the judgment first determines the duration of the custodial penalty. Subsequently, it is then replaced with the community service sanction. Based on the duration of the custodial penalty, the duration of the community service sanction is determined.

This means that the duration of community service is the same as the duration of imprisonment or jail term. In other words, there is a correspondence between the durations of the two penalties – custodial penalty and community service sanction. This practical alignment is significant in terms of executing the remaining portion of the penalty in case the community service sanction is revoked.

Implementation of Community Service Sanction and its Legal Effects

Implementation of Community Service Sanction

The stage of implementing community service sanction for the offender is the most crucial phase, as it represents the last line of defense through which society can protect and rehabilitate the individual, preventing them from returning to deviant behavior. Therefore, the Jordanian Law of Juveniles emphasizes a specific privacy for the execution of community service sanction for juveniles. The Execution Judge System was established to oversee criminal penalties against juveniles. The legislator granted the Execution Judge the authority to monitor the implementation of sentences issued against juveniles. One of the tasks assigned to the Execution Judge, as stipulated in Article (29) of the Jordanian Law of Juveniles No. (32) of the year 2014.

As for the implementation of community service sanction on the mature offender, Article (353) of the amended Jordanian Code of Criminal Procedures No. 32 of the year 2017 stipulates that:

- The judge responsible for executing the punishment is designated by a decision of the Public Prosecutor from among the public prosecutors in each Court of First Instance.
- The conciliation judge assumes the role of the judge responsible for executing the punishment in centers where there is no public prosecutor.

The judge responsible for executing the punishment:

- Enforces criminal judgments in accordance with the provisions of this law.
- Monitors the legality of implementing criminal penalties and any community penalties stipulated in existing legislation.
- Community penalties are applied through the specialized directorate in the Ministry of Justice under the supervision of the judge responsible for executing the punishment." Special instructions have been issued regarding the tasks of the Directorate of Community Penalties in the Jordanian Ministry of Justice for the year 2018, pursuant to paragraph (a) of Article (10) of the Administrative Organization Regulation of the Ministry of Justice No. (101) of the year 2015, which clarified the mechanism for implementing alternative measures of community reform."

Article (2) of the Instructions for the Tasks of the Directorate of Community Penalties stipulates that: "The judge responsible for executing the punishment is the public prosecutor or the conciliation judge in centers where there is no public prosecutor. They are appointed by the Public Prosecutor and are responsible for enforcing criminal judgments, monitoring the legality of their implementation, and any community penalties stipulated in existing legislation. The application of community penalties is under their supervision through the specialized directorate."

It is evident from the foregoing that: The community service sanction is issued by the judge presiding over the case of the criminal lawsuit. Once the judgment for community service sanction becomes final, a copy of the judgment or final decision is sent to the public prosecution as the entity responsible for implementing criminal judgments in Jordanian legislation. The judgment issued by the court must specify the number of working hours that the sentenced individual must adhere to, as well as the institution where the sentence will be carried out. Additionally, it should outline the type of work to be performed based on a study of the mental and physical abilities, skills, and experiences of the sentenced individual, along with their

academic qualifications as indicated in the case study file.

It is worth mentioning that the Jordanian Penal Code did not specify the partnering entities responsible for implementing the community service sanction. The Jordanian legislator, in Article (25 repeated) of the Penal Code, referred to alternative measures of community reform, such as community service, community monitoring, and electronic monitoring, without delving into the mechanism for implementing this punishment.

While leaving the mechanism for implementing community service sanction to the public prosecution as the competent authority for executing criminal judgments, it is legally advisable for the Jordanian legislator to define the procedure for implementing community service sanction. There is a necessity to issue a ministerial decision to specify the entities where the work should be carried out and the nature of such work.

And undoubtedly, the tasks involving the cleaning, maintenance, and memorization of portions of the Holy Quran in places of worship contribute to instilling religious values. This provides a significant opportunity to achieve the goals of community service sanction by reducing recidivism, preventing crime and deviant behaviors. The Jordanian Ministry of Justice's guiding manual, issued in 2019, includes a list of these community tasks. The Ministry of Justice has entered into memoranda of understanding with various official entities and institutions to implement alternative measures of community reform, such as the Ministry of Labor, Ministry of Agriculture, Ministry of Social Development, Ministry of Youth, Ministry of Awqaf and Islamic Affairs, Ministry of Education, Greater Amman Municipality, Public Security Directorate, and several official universities, including Al al-Bayt University, Al-Hussein Bin Talal University, and the University of Science and Technology.

It's also worth noting that the Jordanian law does not include a provision allowing individuals sentenced to community service sanction to be subject to the provisions of social security laws, unlike some other legislations that have stipulated this, such as the French law, Algerian law, and Tunisian law. Undergoing the provisions of social security laws would entail that the state is obligated to compensate the sentenced individual for accidents or occupational diseases they may encounter during the execution of their community service sanction.

The receiving institutions are responsible for welcoming the sentenced individuals according to a program deemed suitable for each, and they undertake necessary arrangements and oversee their work, accounting for the completed hours. They also maintain communication with the judge responsible for executing the punishment and notify them of any matters that may arise during the execution of the punishment. Additionally, they correspond with the sentenced individuals concerning their case files and inform them of any injuries sustained while carrying out the punishment.

The majority of legislations governing community service sanction entail a set of duties for the receiving institutions. Among these responsibilities is the consideration of provisions related to the health and social security of the sentenced individuals. Therefore, it is incumbent upon the receiving institution to adhere to these provisions to ensure the rights of the sentenced individuals in case of emergencies during the execution of their tasks. Furthermore, these institutions are also responsible for insuring the sentenced individuals against workplace injuries, following the regulations of labor laws that require insurance for workers to safeguard their rights.

The sentenced individual also bears a set of responsibilities that must be adhered to in order to

ensure the proper and correct execution of community service sanction. These responsibilities include undergoing a personal assessment by the judge responsible for executing the punishment. The sentenced individual is required to attend the scheduled appointment and be informed of the examination, necessitating their cooperation with the personnel conducting the assessment. This cooperation is crucial in determining the nature of the work, as well as the social and health conditions of the sentenced individual. Failure to comply with attending this assessment may result in the reinstatement of the original punishment.

It is self-evident that the sentenced individual must commit to performing the assigned work to the best of their ability and in accordance with the instructions issued to them by the judge responsible for executing the punishment and by the receiving institution. The execution of this work is the essence of community service sanction, and the sentenced individual is subject to the supervision of the receiving institution in how they carry out this work.

Upon completion of the sentenced individual's performance of the assigned work, they are entitled to receive a certificate to that effect, which signifies the completion of the punishment. However, in the event of a breach, it may result in the suspension of the execution of this punishment and a return to the application of the original punishment.

The sentenced individual is also required to adhere to performing this work within the designated schedules. They must commit to the specified number of hours and the time period stipulated by the legislation for completing the work.

Legal Implications of the Implementation or Non-Implementation of Community Service Sanction

The legal effects resulting from community service sanction differ in the case of completion by the sentenced individual compared to the case of violating the obligations associated with this punishment. The Jordanian legislator has stipulated the suspension of punishment execution in Article (54 repeated) of the Penal Code, in order to avoid the disadvantages of short-term deprivation of liberty and create an incentive for the individual to commit to good behavior, avoid misconduct in their conduct, and encourage adherence to positive conduct.

In some cases, the sentenced individual may be required to undertake specific work during a certain period despite the suspension of punishment execution. Respecting the conditions of the punishment suspension results in the completion of the imposed punishment, and the judgment is considered null and void as if it never existed.

It is worth mentioning that in legislations where community service is considered an alternative to the original penalty, whether it be imprisonment or a fine, this punishment concludes with the sentenced individual fulfilling the assigned work correctly. As a result, the criminal penalty imposed on them expires while the legal effects of the judgment remain. These effects include considering the individual's participation in community service as a precedent in their record, preventing them from benefiting from the social service advantage again in legislations that require the individual not to have a prior conviction. This legal effect does not necessarily apply if the work takes the form of a specific commitment within the framework of suspending the punishment's execution, as specified by Jordanian law.

In the event that the sentenced individual fails to fulfill the assigned work, or does so partially, or breaches the obligations imposed on them, this leads to the cancellation of the judgment issued for the community service sanction. The original penalty, which is imprisonment, shall be

enforced in two scenarios:

- (i) Violation by the convicted individual of the conditions stipulated in Article (54 repeated) of the Penal Code. This occurs when the convicted person receives a prison sentence exceeding one month for a crime committed before or after the issuance of the suspension order. Alternatively, if it becomes evident during that period that the convicted individual had received a prison sentence exceeding one month before the suspension order, and the court was not aware of it.
- (ii) As for the second case, it involves the convicted person's failure to fulfill the obligations of the assigned work – whether by not executing it at all or by inadequately carrying it out. In this case, the liaison officer of the partnering institution informs the Directorate of Community Penalties about the situation. It is the responsibility of the latter entity to inform the judge of the execution of penalties, who must summon the convicted person and inquire about the matter. Then, the convicted person is referred back to the court that issued the judgment.
- (iii) Upon hearing the convicted person, the court has the authority to modify the nature of the assigned work or adjust the number of hours of work prescribed, in case the excuse presented by the convicted person is accepted. The court also has the discretion to cancel the suspension of the execution and enforce the original penalty that was previously suspended. In this case, the cancellation of the suspension is complete, as partial cancellation is not recognized under Jordanian law. As a result, the enforcement of other criminal consequences of the judgment that had been suspended also becomes applicable. All of these decisions fall under the jurisdiction of the substantive court, and the judge of the execution of penalties does not have a role in this matter.

It is worth mentioning that the Jordanian legislator did not stipulate the judge's obligation to warn the sentenced person upon imposing a suspended execution along with the requirement to perform the designated work, with the consequences resulting from non-compliance, evasion of the work assigned, or failure to carry it out. Some comparative legislations have indeed included such a warning, which undoubtedly holds a significant degree of importance. It is not devoid of merit, as it serves as a threat to the sentenced individual, ensuring their adherence to the work conditions and alerting them to avoid anything that might lead them astray or cause them to commit mistakes again in their behaviour.

Conclusion

In conclusion, the study highlights significant challenges in the implementation of community service as an alternative punishment within the Jordanian legal framework. Despite the introduction of community service provisions in the Penal Code, gaps in legislation, unclear monitoring mechanisms, and issues surrounding consent hinder its effectiveness. Furthermore, the application of community service for juvenile offenders raises critical questions about its appropriateness and potential for rehabilitation. Addressing these challenges is essential for creating a more effective and just penal system.

Findings

1. The lack of specific definitions and categories for offenses creates ambiguity in applying community service.
2. Existing mechanisms for overseeing community service are inadequate, leading to potential non-compliance.

3. The requirement for consent complicates cases with multiple defendants, resulting in inconsistent sentencing.
4. The obligation for young offenders to perform community service may not align with their developmental needs and rehabilitation goals.

Recommendation

1. Regarding the judge's authority, we urge the Jordanian legislator to place limitations, particularly concerning crimes that should not be sentenced with community service, especially crimes with social and moral implications, even if the required conditions are met..
2. Develop robust mechanisms to monitor compliance with community service requirements, ensuring accountability.
3. Reassess Juvenile Penalties: Evaluate the appropriateness of community service for young offenders and consider alternative rehabilitation strategies that better suit their developmental needs.
4. Learn from successful community service programs in other jurisdictions to enhance the implementation and effectiveness of community service in Jordan.

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