

The Penal Treatment of the Habitual Criminal

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Abstract: Legal punishment may fail to fulfill its social function, by reforming the individual and reintegrating him into society, because there is a missing link related to one of the fundamental concepts adopted by the social defense policy in various modern countries. The habitual and professional criminal is the best evidence that Algerian penal legislation needs to re-review the classification of criminals, and search for more effective means to reform convicts, away from the traditional concept of criminal responsibility and punishment.

Keywords: Habitual criminal, Social defense, Criminal liability; Punishment.

Introduction

Personality is a major factor in criminal behavior. To determine what makes a criminal “a criminal,” we need to understand his/her personality. This helps identify different personality traits that link criminals to their personality.

Criminals are classified based on the gravity of their crimes into several categories, to ensure appropriate penal treatment, taking into account the past, present and future, which results in the emergence of a criminal personality, characterized differently from the rest of the categories, and requires a different reaction.

The human being factor imposes itself in this issue, as the solution to crimes does not lie in determining the punishment in isolation from identifying the factor or motive, of a psychological nature that contributed to feeding the tendency to commit criminal behavior, in order to prevent the criminal danger inherent inside the perpetrator.

A person acquires several behaviors within society, including criminal behavior. Each individual is willing to acquire certain patterns of behavior, motivated by exploration, imitation, or to achieve a specific interest or purpose. Therefore, a distinction is made between instinctive or innate behavior and acquired behavior.

Given that modern countries have entered the era of cultural globalization, with the development of communication and social media, this has turned things upside down, and has contributed to the emergence of certain patterns of deviant behavior that may reach the point of criminality, which was not known in the traditional societies that adopted National values.

The problem is considered more complex if this pattern of deviant behavior includes women and children, or becomes a criminal phenomenon spreading among various groups in society, such as

prostitution, sexual harassment, indecent acts, drug abuse, public drunkenness, and driving while intoxicated, as well as domestic violence and habitual insulting, or defamation that violates the sanctity of private life, all this have become widespread phenomena in modern societies.

Therefore, it is necessary to address the issue of habitual criminality, because it poses a threat to the values and order within society, because the habit reveals a previous willingness to commit a certain criminal behavior, and different crimes may be committed, to achieve the criminal behavior to which the perpetrator is accustomed

The problem is to determine the extent to which the penal legislator agrees to address habitual criminality, given that the habit leaves a psychological impact on the individual, making it difficult to get rid of the behavior or reform the convict. Therefore, the penal treatment for the habitual criminal is supposed to be special.

The first section: Description of the habitual criminal in terms of criminal danger

The habitual criminal is distinguished from the rest of the criminal groups, psychologically and behaviorally he has characteristics that make him different, so he is characterized by a special criminal dangerousness. A person who repeats criminal behavior such as theft, begging, swindling, and committing corruption crimes such as bribery, embezzlement, and exploitation of power and influence, to achieve an illegal private interest.

The first requirement: distinguishing the habitual criminal from the rest of the categories of criminals.

A person who repeatedly commits a crime is considered the most dangerous criminal, and has characteristics that make him different from other criminals.

Section One: Distinguishing between a criminal by habit and a criminal by formation:

If the criminal suffers from an abnormality in the organs of the body, such that he does not have a healthy or normal physique, and this is linked to a disease or defect in formation, he is described as a natural criminal if his criminal behavior is linked to that deficiency or defect and is attributed to it, then the person has an inherent inclination or a setback in his nature, which prompts him to commit a crime, because of the deficiency or defect he feels.

The basic principle is that the habitual criminal does not suffer from a deficiency in body or defect in formation, and unlike the natural criminal, who considers criminality to be an inherent nature in him from birth, the habitual criminal acquires that type of behavior, due to mingling, love of imitation, or experience. As for the psychological tendency to committing a crime, the two types may be equal, which makes them more dangerous from a criminal standpoint.

Section Two: Distinguishing between a habitual criminal and first time offenders:

If an individual commits a crime due to external circumstances that affect his will, he is described as a criminal by chance. Likewise, if the person commits a prohibited behavior for the first time, regardless of the motive behind it, he falls into the category of novice criminals. Likewise, the emotional criminal is considered a novice or by chance, if he commits his act. Under the influence of a certain feeling or emotion, it affected his will and prompted him to commit the crime.

The habitual criminal is considered more dangerous because he has repeated the criminal behavior, which proves his tendency and willingness to repeat that behavior in the future, unlike the novice or occasional criminal, who does not tend to repeat the behavior and feels remorseful, and is more capable of reformation and correction, unlike habitual criminals.

It is better to separate novice criminals from habitual criminals, whether in the stage of criminal prosecution, or trial and implementation of punishment. The occasional criminal can benefit from the punishment of working for the public benefit, but within the penal institution the two categories must be separated, with a more severe punishment imposed on the habitual criminal.

Section Three: Distinguishing between a recidivist criminal and a habitual criminal:

Principles of a psychological nature have been adopted to define and identify the habitual criminal. As for the recidivist criminal, or what is known as the case of recidivism in law, it means convicting the person according to a final ruling, then re-committing the same crime or another crime, within a specific period determined by the legislator, which results in severed responsibility and penal punishment.

Although the case of recidivism reveals a tendency to commit crime, this does not apply to all cases in reality, as the recidivist criminal may commit his behavior under the influence of objective or external factors, so the habitual criminal may be more dangerous than the recidivist, by virtue of the inherent psychological tendency he has as a result of repeating the crime, so it is best to review the criminal liability system for recidivism crimes.

There has been a call to go beyond the idea of “recidivism,” which is considered a purely legal idea, and to replace it with another idea that leads to better results, represented by the idea of the “habitual criminal” or the habit of committing crime, which proves a degree of danger and damage in the delinquent and prompts the judge to examine the extent of the offender’s danger and not in the circumstances of the criminal incident that the offender re-committed.

Section Four: Distinguishing between a habitual criminal and a professional criminal:

A person does not reach the level of professional criminality unless he is accustomed to committing crimes, such as the habit of murder, theft, indecent acts, kidnapping individuals, harboring delinquents, or begging. Then the criminal begins to carry out the criminal behavior in exchange for a reward or to make a profit, and thus he becomes a professional and well-known in the world of crime, related to In the field of business and achieving certain interests, such as professional killers.

If every professional criminal is habitual, the opposite is not true. A person may repeat the criminal behavior several times, or during long periods of time, without seeking to collect compensation or financial gain, such as the habit of inciting minors to engage in indecent acts.

Of the criminal risks, the professional criminal is considered more dangerous, because his psychological preparation is stronger, because he uses crime as a way of living and earning money and his activity is considered more organized compared to the habitual criminal, who may not plan his criminal behavior well.

The second requirement: the criminal dangerousness of the habitual criminal:

The danger does not lie only in the criminal’s behavior. Despite all the aggression that the criminal act carries and the violation of social values, the inherent tendency of this type of criminal to repeat the behavior and continue the criminal act makes it more dangerous than a novice or accidental criminal.

The first section: The behavioral aspect of the habitual criminal:

The Belgian Social Defense Act defines a habitual offender, in Article 15 thereof, as “a criminal who re-commits the crime at least three times for crimes each carrying a penalty of at least six

months within a period of 15 years, and who appears to have a persistent tendency towards crime.”

Criminologists describe the habitual criminal as an individual who does not have an inherent inclination to crime, but his moral weakness pushes him to commit crime, on a regular and repeated basis, and thus he develops the inclination to crime, and thus the crime does not become an accidental case for the habitual criminal, but rather is considered a normal matter with principles. And psychological roots.

Habitually is based on repeating the same behavior several times, but continuing with it does not necessarily make the criminal habitual, because an individual, for example, may possess stolen items for a certain period of time, but he doesn't repeat the behavior while those items are still in his possession, so he is considered a novice criminal who has committed a crime. Continuous, and not described as a habitual crime, unless the behavior is repeated again.

A distinction must be made between habitual criminality, which is the repetition of the same criminal behavior, and multiple crimes, which is the intention to commit several different criminal behaviors, whether in terms of description, seriousness, or classification in the Penal Code. This is not considered habitual as long as it does not include the same behavior or the same person.

The more the behavior is repeated and the criminal is not punished, the more secure the punishment becomes and the criminal becomes more accepting of the crime and accustomed to it, and the voice of his conscience is absent. Thus, he becomes more professional and more dangerous to the values of society, and may incite other individuals to carry out the behavior, or create a gang. The act stipulated and punishable in Article 176 of the Criminal Code. Performing the behavior more than twice indicates that the individual has accepted the crime and is accustomed to it.

Every organized criminal association or activity, or the goal of which is to achieve material gain or profit, is a presumption of repeated behavior or habit, which calls for the necessity of conducting a judicial investigation, and raising the element of the inherent tendency to engage in criminal behavior, to ensure that measures are taken that would put an end to criminal activity in the future.

Section Two: The psychological aspect of the habitual criminal:

Article 252 of the Syrian Penal Code defines the habitual criminal on a psychological basis, and describes him as “a criminal whose criminal act indicates a permanent psychological readiness, innate or acquired, to commit felonies and misdemeanors.”

This type of criminals suffers from weak morals or upbringing and discipline, due to being affected by negative external factors, and repeating the same criminal behavior several times, which reveals a defect or a bad personality, and the difficulty of reform and correction, or its impossibility in some cases.

The habitual criminal is described psychologically as a person who has adapted to the world of crime, whose view of what is right has narrowed, and his horizons of deviance have expanded, which makes the tendency towards committing crime inherent in himself compared to the accidental criminal, due to the absence of factors that make him adapt positively to the morals of the society, or Inability to control oneself and direct behavior.

Criminal danger also lies in the element of premeditation, or calm thinking that precedes behavior, with a determination to carry it out, so that the habitual criminal becomes, over time, a

professional, in the fullest sense of the word, and if he enters prison and mixes with novice criminals, he becomes a school of crime.

The characteristic of habit gives this type of criminal a state of not feeling guilty after committing the criminal act, and this is what makes them more dangerous from a criminal standpoint, as habit is the second nature of the person, which makes him approach the natural criminal or criminal by nature.

Therefore, it is necessary to focus on the psychological aspect to determine the criminal danger of the habitual criminal, and this requires the appointment of a specialized psychological expert, who prepares a report revealing the degree of defect and corruption inherent in the offender's psyche, in order to determine the measure that suits his criminal personality.

The second topic: Confronting the criminal danger of the habitual criminal:

This requires adjusting the rules of criminal liability, and taking penal measures that are consistent with the condition of the habitual criminal, so that they contribute to reducing his criminal tendency, thus contributing to his reintegration into society.

The first requirement: Aggravating the responsibility of the habitual offender:

If the case of habituality is proven, the responsibility of the habitual criminal must be increased, meaning that he is treated with special and substantive procedures, aimed at determining the details of the criminal danger inherent in his person, and revealing its details to remove the ambiguity, which may leave the prosecutor a certain margin, enabling him in the future to return to committing the crime.

The first section: The criminal responsibility of the habitual criminal in Algerian criminal legislation:

The Algerian legislator did not impose special provisions for the responsibility of the habitual criminal, unlike some penal legislation, even though the issue is considered more urgent, to protect society and its individuals from the inherent criminal danger.

First: Penal Code:

With reference to the Penal Code, habituation is considered one of the elements of the crime of providing shelter or a meeting place to individuals who engage in acts of banditry and disturbance of order or public security, according to the text of Article 43 of the Code, and with reference to Article 195 of the Code, a person is not punished for committing a crime. Begging, unless the element of repetition and habituation to this practice is proven.

With reference to Article 54 Bis Penal code, the legislator aggravates the criminal responsibility of the recidivist criminal, even though the habitual criminal may be more dangerous than him in some special cases. Recidivism cannot be evidence of habituality, but rather a special investigation must be conducted to uncover habituality.

With reference to Article 303 bis 4 of the Code, which relates to human trafficking, and Article 303 bis 16 of the Code, which criminalizes trafficking of human organs and the smuggling of migrants in accordance with Article 303 bis 30 of the Code, the usual criminal comes to the fore, especially when it comes to the crime. Transnational organization: The criminal is described as a professional, because these

criminal organizations seek to achieve financial profit, so the legislator requires the judge to aggravate the punishment in these cases.

With reference to Article 305 Penal Code, in the event that it is proven that the perpetrator is accustomed to performing abortions, his criminal liability is increased, and the imprisonment penalty is increased from one to five years to the maximum. Criminal liability is also increased in the event of a habit of money laundering or within an organized criminal group. In accordance with Article 389 bis 2 of the Code.

Second: The Code of Criminal Procedure:

With reference to Article 66 thereof, the investigation is mandatory in felonies, and optional in misdemeanors, without taking into consideration crimes of habit. Whether they are felonies or misdemeanors, they must be subjected to a preliminary investigation procedure, to reveal the various details related to them.

In the case of flagrante delicto misdemeanors, if habitual behavior is proven, it is better not to follow the immediate appearance procedure, and to stay away as much as possible from the automatic handling of the case and speedy dismissal because the issue requires conducting an investigation into the character of the accused, to determine the appropriate measure to address his criminal danger.

Third: Prison Organization Law:

With reference to Article 24 of the Prison Organization Law, a Penal Implementation Committee was established, which arranges and distributes detainees according to their penal status, the seriousness of the criminals for which they are imprisoned, their gender, age, and personality, while determining their potential for reform.

According to Article 49 of the law, a novice detainee is separated from the rest of the detainees who are accustomed to the prison system, without addressing the situation of the habitual criminal who may be a professional in crime and at the same time a novice detainee. The deficiency is due to the Penal Code, which does not classify criminals, and the Code of Procedure. Criminal law, which does not impose a previous examination, to verify the identity of the accused.

The second requirement: Imposing social defense measures on the habitual criminal:

"Philippogrammatica" calls for replacing the name "penal code" with the name "social defense law", perhaps developing the state's function in the field of criminalization and punishment.

The relationship between crime and society, and the danger that crime represents to the public interest, requires not focusing solely on punishment in its traditional form, and creating a law for Social defense that adopts more sophisticated and practically appropriate means of punishment, to confront the criminal danger inherent in the offender.

It is wrong to subject the usual criminal to the classic criminal liability system, or what is known as the policy of deterrence or intimidation, especially in the face of the development of various criminal phenomena. Society finds itself forced to defend itself against different types of criminals, and does not adopt traditional punishments as much as it takes social defense measures.

The convict is pursued judicially and socially, so that it can replace the incarceration sentence as an original punishment, according to Article 131-36-7 of the New French Code, by subjecting him to obligations, testing his reaction, and submitting periodic reports by the authorities that

follow the criminal's development. The situation goes to the penalty enforcement judge, who has the authority to amend those restrictions and obligations, on his own initiative or at the request of the Public Prosecution.

Section One: Detention of habitual criminals in specialized penal institutions:

The habitual criminal must be separated from the rest of the categories of criminals, in institutions qualified to deal with that most dangerous category, by imposing obligations that are not approved for the rest of the categories of convicts.

This is approved for all age groups of habitual criminals, especially if it comes to the category of juveniles or children exposed to delinquency. The matter is considered more urgent, by preventing the mixing of juveniles who are habitual criminals with juveniles who are novices in the world of crime, because the child is quickly affected by external factors. Due to his weak mental abilities and ability to differentiate.

With reference to Article 52 of the Egyptian Penal Code, if it is decided to consider the recidivist a habitual criminal, when it becomes clear from the circumstances and motives of the crime, and from the various conditions of the accused and his past, that there is a serious possibility that he will commit a new crime in the future.

In this case, the court shall order his placement in one of the labor institutions, the establishment and organization of which and how to treat those placed therein shall be issued by a decision of the President of the Republic, until the Minister of Justice orders his release based on the proposal of the management of the institution and the approval of the Public Prosecution. The period of placement in the institution may not exceed Six years.

The UAE legislator stipulates social defense measures to confront criminal danger, in Article 136, where habitual crime is considered one of the cases of Social defense in Article 134, which stipulates that if there is a recidivism in accordance with one of Articles 107 or 108.

The court may, instead of imposing the punishment that the offender deserves, decide that he is a habitual criminal, and order that he'd be placed in a labor institution, provided that the period of placement for habitual criminals does not exceed five years in the case of misdemeanors, and ten years in the case of a felony.

Section Two: Subjecting the habitual criminal to probation after serving his sentence:

Article 102 of Yemeni Penal Code stipulates that the court may order that the convict be placed under supervision for a period of not less than one year and not more than three years, starting from the day the imprisonment sentence expires.

In his ruling, the judge determines the obligations imposed on the subject, such as residing in a specific place and not changing it except with the approval of the administrative authority, or refraining from going to certain places, and if there are no special monitoring bodies that the police took over.

The prosecution, within whose jurisdiction the probationer's residence is located, supervises the implementation of probation, based on periodic reports submitted to it about the behavior of the convict, every three months at most, and it may amend its restrictions or be exempted from them after half its term has passed, if the convict violates the conditions of probation, the judge may tighten its conditions, or sentence the violator to imprisonment for a period not exceeding one year.

The convict can be subjected to electronic monitoring, instead of a short-term prison sentence, according to Article 37 of the Belgian Code, and this measure can be adopted for the habitual criminal before he is brought to trial, instead of temporary imprisoning him so that he does not mix with the rest of the groups within the penal institution, as it was stipulated The new French Penal Code, at Article 131-36-9.

After serving the sentence he was sentenced to, he is monitored electronically, to ensure that he does not commit a crime in the future, through knowledge of the places he frequents and the individuals he deals with. The duration of this measure can reach a period of five years, calculated from the date of his conditional release.

Section Three: Imposing measures on the habitual criminal after the end of his sentence:

It aims to ensure that the punishment achieves its purpose of preventing the recurrence of the same criminal model, and is represented by prohibition from residing, practicing a certain activity, meeting certain people, going to certain places, or possessing specific means, for a temporary period after serving the sentence period, determined by the judge in The ruling he will issue.

With reference to Article 254 of the Syrian Penal Code, every habitual criminal who is sentenced to a penalty other than a fine pursuant to Articles 248 and 249 is deemed to be a danger to public safety, and is sentenced to isolation if he is sentenced to a penalty depriving him of freedom, for a period of at least seven years, in order to prevent... Repeating another offense, and subject to supervision after his release, for a maximum period of five years.

Conclusion:

From the above, it is clear that the concept of guilt and traditional punishment has been overtaken by events, with regard to the habitual criminal, who differs from the rest of the categories or sects of criminals, and that various penal legislations have tried to accommodate the issue by creating mechanisms of a legislative nature, to address the criminal danger represented by this type of offenders. Either with explicitly or implicitly.

Regarding Algerian penal legislation, it needs to be open to the legislations and experiences of countries in the field of dealing with various types of criminals, with the formation of specialized judges, in order to overcome the stage of rigidity and punishment, and enter the stage of management that reflects flexibility and intelligence in dealing with the psychological and emotional sides of the convict.

This entails the necessity of establishing specialized institutions to receive this type of convicts, which organize activities and carry out work to eliminate the tendency to crime, which the habitual criminal has acquired as a result of certain circumstances.

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