

THE PUNISHMENT FOR RECIDIVISM BETWEEN THEORY AND PRACTICE (ALGERIAN LEGISLATION AS A MODEL)

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Received: 15/08/2023 Accepted: 03/02/2024. Published: 22/04/2024

Abstract:

This paper explores the concept and application of punishment for recidivism within the context of Algerian legislation, analyzing the theoretical foundations and practical implementation. The study delves into the legal framework and judicial interpretations that govern the treatment of repeat offenders in Algeria, comparing these with broader international standards and practices. It aims to identify the discrepancies between theory and practice, shedding light on how legislative measures are enforced and their effectiveness in deterring criminal behavior. Through a comprehensive examination of case studies and legal texts, the paper evaluates the adequacy of current laws and suggests potential reforms to enhance the justice system's response to recidivism. The findings contribute to the ongoing discourse on criminal justice reform and the balance between punishment and rehabilitation in addressing repeat offenses.

Key words: Recidivism; Punishment; Criminal Justice; Algerian Legislation; Repeat Offenders.

INTRODUCTION

As is known in legal jurisprudence a crime is any behavior that can be attributed to its perpetrator, causing harm or danger to a social interest protected by a criminal penalty (abdullah. s, 2002, p150), it is represented in the punishment imposed on the perpetrator of criminal act, which is considered a treatment in ending the crime and rehabilitation.

However, unusually the criminal may not be deterred by the penalty imposed on him and so he commits the crime again, which confirms his criminal danger to the security and safety of society.

Accordingly, comparative legislators after their attempt to establish legal legitimacy in imposing the penalty; found themselves obliged to establish the legitimacy of renewing the penalty in the event that it does not achieve its goals.

From here, the idea of dealing with the phenomenon of recidivism grew, in the beginning the dose of punishment was greatly increased, or criminal was eliminated by execution or exile to remote areas (MARIE H.R, 2002, p321).

In the face of the increasing indicators of the criminal trend and its remarkable increase the necessity became urgent to combat crime and the phenomenon of recidivism.

From this point comes the importance of effective study of penal sciences in general and penal law in particular in satisfying the sense of justice and contributing to investigating the causes of recidivism and finding a successful treatment for it, why the Algerian legislator is one of those who are trying to establish a recidivism system that is consistent with the composition of Algerian society.

In addition to this, the recidivism system results in a number of problems, so this intervention of mine may be merely a presentation on the subject, waiting for it to be reinforced with juridical applications, which will serve as the decisive factor in clearing up the confusion.

Also the penalty prescribed for recidivism raises several basic problems that every legislator tries to solve to find solutions to, therefore the problem of our research was the extent to which the Algerian legislator was successful in finding appropriate solutions to the problems that arise from it, including the requirement for the finality of judgments, which oscillate between partial implementation and total implementation, and the extent of their impact on renewing it, as well as the powers granted to the judge in renewing it, and the extent of its exposure to the other legal circumstances.

To answer these questions, our legal study of the subject of recidivism adopted a double division at the time of our research.



The first was to delve into the theoretical aspect related to the basic principles on which the recidivism system is built.

As for the second point of the research related to criminal penalty legally prescribed for recidivism.

- The first section: the basic principles of recidivism.
- The second section: the criminal penalty prescribed for recidivism.

The first topic; basic principles of recidivism.

The profound development witnessed by the criminal legal systems in their various aspects, especially with regard to issue of recidivism, requires that there be a sequential clarification of the basic principles of recidivism with in three demands: the first to define recidivism, the second to explain its various forms, and the third to explain its elements and characteristics.

1. The First requirement: definition of recidivism.

Definitions play an important role in determining the content and clarifying what is meant by it.

Choosing a definition is not a matter of creation and innovation, but rather is primarily the result of conscious attempts to analyze the content, taking full account of the different uses (Ahmed. A.B.A, 19-68, p46,47), therefore the term recidivism varies in definition according to the different requirements that raise the question of the meanings of this term, which brings us to two trends that have no third in defining recidivism.

The first is the legal definition, which refers to recidivism as an abstract legal idea stipulated in the laws.

As a real verb issued by an individual act (first section), the second is criminology definition of recidivism which trends to analyze the personality of the recidivist criminal as an entity with motives before his actions are a pure legal fact (section two).

1.1. The first section: legal definition of recidivism.

As we know legislation is the control of concepts and the means by which we learn about the punitive policies followed through examining legal texts.

Accordingly, we will try to find out the extent to which legislation addresses the issue of defining recidivism as well as jurisprudence additions to this definition, even if it has gone beyond the efforts of the texts contained on the subject of recidivism and similar legal systems.

1.1.1-Firstly: the place of recidivism in legislation.

Is that the philosophies of criminal punishment were first and still are in most cases the influencing factor in penal legislations and policies, as these philosophies crystallized in the form of schools, there are those who embraced the ideas of the traditional school which links punishment to the seriousness of the actual act, regardless of the personality of the offender that is the punishment and the crime are the focus of recidivism through the outcome that the recidivism entails, it effects the amount of punishment and also effects the specific of the crimes (Khalef, 1989, p13,14), in contrast to the positivist school, which believes that the responsible person is the prominent element in recidivism, what is most important is that the person directly concerned in the case of recidivism is the only one who bears the burden of aggravated punishment, and this is what the Italian legislator took, which included the provisions of recidivism under the heading of the responsible person and the person harmed by the crime (Khalef, op cit, p14).

As for the Algerian legislator, it only adopted the ideas of the positivist and traditional schools, since recidivism, although it is a special case that exists on its own and is essentially connected to the criminal, has also a relationship with crime and punishment.

The inclusion of the texts on recidivism in the second book under the title: **acts and persons subject to punishment**, is evidence of this and accordingly how the Algerian legislator allocated 13 articles of the penal code to explain the various legal provisions that must be met for recidivism to occur (law 23/06, 2006/12/24, p17,19).

It must also be noted that the special laws, in turn had a legal regulation of recidivism, this regulation is characterized by the fact that it violates some of the general provisions contained in the penal code and brings provisions that are unique to them, and they are more like an exception than they are in contrast to the general provisions.



These exceptional provisions do not focus on the basic principles, so the principles of requirement, is the availability of the elements of recidivism and their characteristics is a fixed and necessary principle in the private laws regulating recidivism and the penalty is increased punishment is also the result or effect resulting from it, often in private laws (law 18/04,2004, and order 06/05,28/08/2005, p07).

1.1.2-Secondly :the jurisprudential definition of recidivism.

Jurisprudence is the opinions of jurists, including law professors, judges, and others who work diligently and write in their legal and scientific works.

Jurisprudence also has an important role in explaining and interpreting legal and scientific texts, therefore the recidivism and its rulings have had their share of jurisprudential research especially in the attempt to find an accurate definition for it, and based on this we were faced with there are two streams of definition of recidivism jurisprudentially.

There are those who define it based on specific points related to the element to be displayed, and there is another who defines the general definition, which is based on its pillars and general conditions.

-as for specific definitions of recidivism; it is a definition that is based on each element that makes up recidivism, there is a definition that focuses on the element of similarity between the new crime and the previous crime (published judges, 1982, p195), another that focuses on the element of the time elapsed between the previous crime and the new crime (mouhammed. a, 1997, p576), and others that focus on the element of criminal seriousness of the offender.

Thus, the definition of special recidivism shows that there is a relationship between the goal of the definition and its content, the content changes as the goal changes, which leads to the absence of a single definition of recidivism (abdullah, opcit, part1, p377 ;378).

- As for the general definitions of recidivism, it is every legal description that is attached to a person who returns to crime after he has been sentenced to a punishment according to a previous ruling that has become within the conditions set by the law, from the issuance of conviction ruling against the offender and his commission that is the offender of a new crime against him after the previous ruling (most the definitions of recidivism are definitions of images the recidivism).

- We conclude after the above definitions of jurisprudence whether specific or general that the definitions are not 100 percent uniform, and there are many influences that affect them as penal policies differ from one country to another, and the economic and political systems also have a clear impact on the ways of crime and recidivism.

1.1.3. distinguishing the recidivism from other system

Recidivism has similar legal systems in terms of its rulings and cases, which requires us to compare them, including the multiple crimes system, as well as the difference between the multiple crimes and recidivism, as well as the difference between habituation to crime and recidivism.

-with regard to multiple crimes, it is that the offender commits at least two crimes before he is finally sentenced for one of them, the Algerian legislator has stipulated in article 32 up to the end of article 38 that in multiple crimes it is assumed that there are three elements :

* the first : the perpetrator alone is the perpetrator of multiple crimes. He is the same person and is tried for all the crimes he commits (soulaïmane.a.m , opcit, p 802,803).

*secondly : in multiple crimes, the offender commits more than one crime, and it does not matter the nature, type, or specificity of these crimes (fatouh.a, 2001, p351).

*thirdly : these elements are represented in the absence of a justified ruling against the same offender for the crimes he committed (juridical.journals,1999/01, p183), and the multiplicity of crimes in the application of the punishment prescribed for the most severe crime (penal .law ,article 35,p01).

The importance of distinguishing between them appears when imposing the penalty as recidivism results in a renewal of the amount of penalty for the crime, while other crimes lead to a reduction in the punishment, because the offender who commits successive crimes is only subject to the punishment associated with the most serious and criminal crimes, which is complete in the criminal's soul, although he was sentenced for previous crimes, he was not deterred.



As for habituality and recidivism, it is that recidivism is an aggravating circumstance that indicates that the offender has returned to committing the previous crime as determined by the law, and therefore he deserves a harsher punishment, while habituality is that offender repeats the commission of the same act until the crime is complete, committing the act for the second time is an integral part of the materiality of the criminal incident and is not an aggravating circumstance as is the case for habitual begging stipulated in article 195 of the Algerian penal code.

Through all of this the clear difference between recidivism and similar systems becomes clear to us, which makes it a self-contained and independent system with its legal provisions.

2.1 Section two: definition of recidivism in criminology.

The definition of recidivism in criminology is the most comprehensive definition of this phenomenon, and it is a concept that differs from the concept of the law, as the latter, in its traditional form, limits the crime and the return to it to every person who has committed after having been finally sentenced for a previous crime.

Although this definition has an importance that cannot be denied, criminologists defined recidivism from two perspectives and they presented divisions for recidivist criminals.

1.2.1 First: expanded definition of recidivism.

This definition considers that recidivism goes beyond the scope of crimes established by a judicial ruling and goes beyond it to indicate the state of insistence on committing crimes, whether a ruling is given for this crime or not. Accordingly, recidivism here focuses on one fact, which is the repetition of committing crimes.

However, this expansion must not depend solely on the personal standard of the perpetrator, but rather it must be supported by an objective standard in which it refers to crimes proven by judicial rulings so that this does not constitute infringement on individual freedoms (Ahmed.a, opcit p53,55).

2.2.1 Secondly: the narrow definition of recidivism.

Some criminologists went to narrow the definition of recidivism but despite that, it remained broad in scope compared to the legal definition, where the case of recidivism is seen as the case of person who committed another crime whether this crime was officially proven or not (Khalef, opcit, p29).

Accordingly the criminology definition of recidivism did not match the legal definition because the data taken in both definitions are not the same, which made the result different. Criminology is concerned with the person of the recidivist criminal as a dangerous and abnormal case that must be taken care of and treated in the same way that the legally the recidivist is viewed as a threat to society that must be eliminated as soon as the specific conditions for return are met by applying aggravating circumstances (Nabih.S, 2003, p21).

3.2.1 Third: the division of criminology into recidivist criminals.

What is new in criminology; similar to those of jurists, is its attempt to develop a classification for the various categories of recidivists, specifying the advantages of each category; as the recidivists, they are people who commit their crimes either due to a medical condition or by acquiring criminal tendencies and their inclination to commit crime due to the circumstances surrounding them (Soulaimane.A. S, 2003, p229).

Accordingly, the classification of recidivists is based on two basic categories. The first includes habitual recidivist criminals due to the availability of indications of permanent and effective psychological deviation, and their ability to harm and their stable condition lead to professional crime (Ben Chikh. F, 1995, p12,13).

As for the second category, which is the category of returnees for the purpose of earning money due to the social conditions that surround them.

Therefore, criminology's attempts to classify returning criminals are extremely important; as it strengthens us, along with the lawmen, with a broader knowledge of the person of the returnee and his condition in order to find the best solutions for reform, especially if they are returning due to their psychological and sick condition, because no one who accustoms himself to crime is like knowing it like someone who accepted it before due to the instability of his central core to bring together his deviant or criminal personality.

2-The second requirement: forms of recidivism.

The development witnessed by the recidivism system over successive times has made recidivism have multiple forms, according to the nature of the relationship between the crime and the previous one. It created the private recidivism, which is equivalent to the general recidivism in addition to the two forms of temporary recidivism and the permanent recidivism, which are governed by the legal time factor time for committing the crime again (Abdelkader.A, 1993; p768).

2.1. First: the concept of general recidivism and private recidivism.

Most of the comparative legislative attempts called for recognition of general recidivism, which in this case stipulated that the next crime should not be of the same type of crime for which the recidivist was previously convicted; or of similar type (Abdelkader. k, opcit, p378).

And the uniformity is whether in terms of description or type, as it is present with different crimes in terms of describing them as a felony, a misdemeanor, or a type such as, (murder, theft, or indecent assault), and this is often linked to serious crimes (Abdelaziz.A ; opcit ; p15).

In addition to this, we have the image of the special recidivism, which is considered to be first in its birth to the previous one, as they believe that this type of recidivism is not achieved unless the new crime is identical or similar to the first crime and similarity is two types of real resemblance.

The offender was committing a theft crime after he had previously been convicted of a theft crime, here the two crimes are united in name and description, and there is a similarity in judgment; as the perpetrator commits a crime that is united with the previous crime; such as their union in type of right attacked (Fatouh.A. chadli, explanation of penal code, general section ...p352).

2.2- Second: the position of the algerian legislator.

Regarding the algerian legislator; when we examine the articles specifying recidivism, we notice that it mixed in taking both forms of general recidivism and private recidivism in relation to both natural and moral persons, according to article 554bis and article 54bis05, there is general recidivism because these two articles do not stipulate that the following crime be committed. of the same type of crime for which the recidivist was previously convicted or similar.

While articles 54bis03, 54bis04, 08bis, and bis09 apply to the special recidivism, as specified under article 57, the framework in which the symmetry that constitutes the private recidivism is archived in the previously mentioned, the algerian legislator took the two forms of general recidivism and private recidivism and gave it different dimensions.

Since recidivism was defined as a: **special case for offenders who had previously been sentenced to a final judgment for a crime and subsequently committed another crime in accordance with the conditions specified in the law**, and therefore for the case of recidivism to exist a number of elements and characteristics must be present, some of which are related to the previous ruling and the other to the new crime.

***Firstly: the characteristics of the previous criminal ruling:**

It is that the previous ruling is a final ruling, to be considered a precedent in recidivism, meaning that the ruling has exhausted all methods of appeal and has become final has the force of res-judicata (Alem.H, the code of procedure (a jurisprudential commentary and analysis of the texts, p765), and therefore the judgment of conviction is not considered a precedent in recidivism as long as it has not yet become a final ruling and the perpetrator has one of the methods of appeal.

Also, if every person whose crime was committed was filed before the ruling was issued for the previous crime, it is not permissible for the court to consider the accused as a recidivist (Marsafaoui.A, penal code, p108).

***Secondly: the final ruling must include an original punishment:**

Meaning that this ruling must include a punishment whose purpose is pain. The reason for this condition is that the punishment is a means of warning.

Therefore, recidivism is not achieved if the next crime is committed after acquittal ruling or failure to accept the lawsuit, even if the acquittal ruling obliges the accused to pay compensation or the basis for acquittal was the presence of an impediment to punishment.



***Thirdly: the new crime must be independent of previous ruling:**

This condition is considered essential for the person to be considered a recidivist and is conclusive evidence that the offender is not deterred and is not affected by the previous ruling, which confirms that there is a special case for offenders that requires taking tougher measures against them under the recidivism system. Also, committing the new crime has characteristics in common with the previous ruling, some of which relate to the nature of the crime and the other to the nature of the penalty (published by judges, issue 05, p58).

02- The second section: the criminal penalty legally prescribed for recidivism.

In this section we will try to make our study more practical than the previous one, as we will focus our research on analyzing the recidivism system in accordance with the provisions of law 06/23, amending and supplementing the Algerian penal code, by clarifying the points it raises and what the amendment has been successful in establishing the legal systems for renewing the punishment for recidivism, starting with natural persons then introducing what was stated regarding moral persons, and then knowing the legal scope of the judges' authority to increase the punishment for recidivism.

1.-the first requirement: with regard to natural persons.

After the amendment made to the penal code pursuant to law 06/23 regarding the articles of recidivism, the legislator has changed the wording of the articles related to the recidivism of natural persons, and then also changed the method of emphasis; especially after adding the articles related to legal persons which involves studying each one separately.

1.1-The gradation system in the punishment ladder.

It is the system in which upon aggravation, the method of raising the penalty to the highest level is followed, it is the easiest system, except that it can be graduated in one of two cases, either inside or outside.

In the external progression the Algerian legislator specifies the duration of the penalty prescribed for first felony or misdemeanor, in addition to the usual conditions for recidivism following the issuance for a previous final ruling and the commission for a new crime. An example of this is what was stated in the first paragraph of article 54 bis, which is based on two points: the first is related to the first crime, which is that it is a felony or misdemeanor with a maximum penalty of more than five years.

The second is on the basis of which the punishment is aggravated through a method of gradation in the scale of punishments, whereby the criminal punishment prescribed for the second act, if its maximum is 20 years, the punishment is raised to its maximum, and it is raised to death if the crime leads to the loss of a human being's life.

Accordingly, the second paragraph of article 54 bis takes the penalty of the second criminal act to be aggravated, except that raising the penalty to its highest level stipulates that the criminal consequence, which is the death of the person, should be increased.

As for the internal gradation of the penalty, it is summarized in the wording of article 54 bis four related to the recidivism of violations by natural persons, which specified a number of points that must be met in order for the recidivism to occur, in addition to the well-known pillar of a previous conviction and the commission of the new crime, so it stipulated timing, whereby the second violation is committed within the year following serving the sentence, in addition to the similarity between the first and second violation that constitute (the intended similarity between the first violation and the second violations is that two violations are of the same category).

However, this article refers us in its emphasis to articles 445 and 465 of the penal code.

1.2-Double stress system.

There are two methods used in multiplication, and each of them applies a specific and different method, but they all share the mathematical process represented in multiplication, **where the first** method is based on doubling the amount of terms, either by doubling the maximum penalty for the original penalty, or by doubling other cases and the maximum penalty for the second act committed by the offender.

As for the second method, which is the most complex it doubles the amount of the penalty and the maximum limit for the previous crime, to clarify this method, we take as an example the misdemeanor



of escape, which is punishable by imprisonment from two months to 03 years (article 188, 01 paragraph, Algerian P.C.).

The person is sentenced to misdemeanor for the first time and is punished with two years imprisonment, and when he commits the same misdemeanor again the punishment is increased for him; the double system is effective enough to deter returners from their criminal acts (article 445, Penal C.).

2- The second requirement with regard to legal persons:

The Algerian legislators' explicit expression of the criminal accountability of the legal person at the beginning of the year 2004 under law 04/15, where there was an addition entitled penalties applied to legal persons, which is the section that ended all ambiguities the criminal accountability of the legal person, except that the point related to the return of legal persons was not addressed.

The legislator takes the initiative to approve it only after two years passed. I wonder how successful he was in this step and whether the method of tightening was successful after amending the law?

After amending the penal code under law 06/23 this had a significant impact, as the penal code now recognizes that a legal person is held accountable for his recidivism, meaning that he like a natural person can deviate from the behavior prescribed for him and fall into committing a crime, it is even conceivable for a legal person to engage in activities that are alien to him specialist department, that is not among the purposes that necessitated its establishment (Mohamed, A, B, penal responsibility of legal persons, p29).

We also notice through our examination of the articles of recidivism for legal persons, that they follow the same cases of recidivism as for natural persons, except that each of these cases has its own conditions in addition to the general conditions for recidivism to arise from a previous conviction and the commission of a second criminal act.

As for the method of aggravation, the latter is different from what is usual for the return of natural persons, as the penalty of fine that is applied as a general rule to legal persons is taken into account since the penalties of deprivation of liberty cannot be applied to them. (Didier, B. G, penal responsibility of legal persons, p36)

There is also an issue, which is that the penalties prescribed for a felony and misdemeanor are similar, and therefore it is not possible to determine whether the crime committed is a felony or a misdemeanor in view of the penalty imposed on the legal person.

Rather it is determined by the legal definition of the crime according to the penalty prescribed for the natural person.

Accordingly, method used for doubling the maximum original penalty legally prescribed for the crime subject to aggravation, nothing that the doubling is by multiplying in the maximum original penalty originally prescribed for natural persons by 10 times (Charif, S.K, penal responsibility of moral persons, p141).

Although aggravation is considered one of the common matters regarding methods of aggravation of recidivism penalties based on the idea of aggravation in the scale of penalties or aggravation by doubling the method used for legal persons is reasonable to same extent with regard to doubling.

CONCLUSION:

At the conclusion of this research I can only summarize a number of recommendations that I decided to mention regarding this topic, which is considered of great importance in penal policies, as the Algerian legislator by proposing law 06/23 for the recidivism system there are still several practical problems in the application of this system that must be addressed, including: -in particular regarding the aggravation of the penalty for recidivism in private laws, which is based on the severity of it, it does not follow the same methods of aggravation stipulated in the penal code, as it merely said that the aggravation of the penalty for recidivism given the nature of the recidivist it is doubling the penalties of temporary imprisonment, imprisonment, and the fine, whether it reaches the maximum limit originally set for this crime or the number of times, it will be doubled if the person returning is a legal person, this is tantamount to an acknowledgment of the aggravation mechanisms stipulated in the penal even if it is? so does the difference in value of fines and periods of imprisonment and



imprisonment in private laws have an impact reading the idea of deterrence in the case of legislator must answer because the recidivism system despite its existence and the inability to dispense with it still suffers from some shortcomings, which calls for simplified rules. -we also acknowledge that it is easy to find a recidivism system that is characterized by simplicity on the one hand and achieves its purpose of avoiding criminal danger.

-in the end, I can only say that the recidivism system is still in a stage that requires a lot of study to understand the most important points and problems that it raises.

Also, the penalty is considered the sensitive point on which recidivism is based, therefore it is necessary to stabilize the principles of tightening the punishment for recidivism in order to control the phenomenon of crime, regardless of its perpetrator.

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