



A Specialized Legal Study entitled

The Legal Regime of Alternative Penalties in Jordanian Legislation and in International Instruments

Prepared by the researchers

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Introduction

Proceeding from the mandate of the National Centre for Human Rights under its Law No. 51 of 2006 and the amendments thereto, and by reference to Article (5/d) thereof, which provides that the Centre may conduct legal, political, social, educational and intellectual studies and research relating to the objectives of the Centre.

This extensive research study, entitled (The Legal Regime of Alternatives to Custodial Penalties in Jordanian Legislation and in International Instruments), has been prepared in a manner consonant with the standards of modern criminal policy.

The work began with a series of field monitoring visits to the regular Jordanian courts in a number of the governorates of the Hashemite Kingdom of Jordan, and with hearing the views of the honourable judges as to the reality of their practice in applying alternative penalties in the courts of the Kingdom. All of them commended the expansion of that application, in view of the positive effects they had observed upon convicted persons whose penalties had been substituted by alternative penalties.

Custodial penalties have adverse effects upon the convicted person, upon society and upon the State. As a result, the Jordanian legislature, in the most recent amendment to the Code of Criminal Procedure, adopted in Article 114 bis penalties alternative to custodial penalties, since alternative penalties are directed towards the reform and rehabilitation of the convicted person and thereby fulfil the purpose of the penal policy required by the interest of society.

The system of alternative penalties has been adopted at the international and regional levels so as to avert the adverse consequences entailed by imprisonment as a result of the deficiencies of correctional institutions in the countries of the world, whether developed or developing.

It should be noted that the system of alternative penalties, represented by non-custodial measures, has become part of international human rights law, and that States are bound to give effect to it so as to guarantee the great aims which that body of law was designed to achieve, foremost among them respect for human dignity and the safeguarding of personal liberty. The international human rights standards relating to these measures are grounded in the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966.

This is likewise reflected in the Standard Minimum Rules for the Treatment of Prisoners, Rule (58) of which provides: "The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to

society the offender is not only willing but able to lead a law-abiding and self-supporting life." Alternatives to custodial penalties have also been incorporated into numerous United Nations guidance memoranda, including at the Sixth United Nations Congress held in Caracas in 1980, where the Eighth Recommendation called for efforts to disseminate alternative measures throughout the world on a wide scale by incorporating them into criminal legislation, and for legislative bodies to devise alternatives suited to the social and cultural conditions of each country; and at the meeting of United Nations experts held in Vienna in 1988, the recommendation was that strategies and policies be adopted to reduce recourse to imprisonment, together with the need to move towards giving effect to alternatives.

The United Nations Standard Minimum Rules for Non-custodial Measures of 1996 are, moreover, the most important United Nations instrument in this field, and they comprise a number of alternatives, including:

1. verbal sanctions, such as admonition, reprimand and warning;
2. conditional discharge;
3. financial penalties, such as fines;
4. probation and judicial supervision;
5. community service orders;
6. suspended sentences.

Resolution No. (2013/25), approved by the Economic and Social Council of the United Nations on 25 July 2013 concerning the Standard Minimum Rules for the Treatment of Prisoners, likewise provided, in paragraph thirteen thereof, that: "Member States shall make efforts to reduce prison overcrowding and to reduce recourse to pre-trial detention, together with increased encouragement of recourse to judicial and defence mechanisms, and the strengthening of alternatives to custodial penalties such as fines, work for the public benefit, restorative justice and electronic monitoring; and shall likewise support rehabilitation and reintegration programmes in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures, known as the Tokyo Rules."

These Rules affirm that among the requirements of the protection of society are the avoidance of penalties imposed without cause and the necessity of replacing them with penalties consistent with modern criminal policy as regards rehabilitation and reform and the reduction of the pressure of prisoner numbers within penal institutions.

On that basis, this study has sought to set out the concept of penalties alternative to custodial penalties and their principal characteristics; it has likewise addressed the reasons that led the Jordanian legislature to adopt them; and it has explained the forms of alternative penalties adopted by the Jordanian legislature and the authority competent to impose them. The system of alternative penalties has come to be applied so as to avoid the drawbacks of custodial penalties, and in particular short-term ones, with a view to the reform and rehabilitation of the convicted person.

General Framework of the Study

Introduction

Modern trends in criminal law call for the exclusion of penalties of excessive severity upon a person convicted of a minor offence; they advocate adherence to the principle of proportionality between the offence and the penalty, and the making of the short-term custodial penalty an instrument for the reform of the convicted person and his rehabilitation for a sound return to society. In the light of this contemporary development in the objectives of punishment, there has emerged the idea of penalties alternative to the short-term custodial penalty, so as to avoid its drawbacks and defects and its failure to achieve the objectives of punishment in reforming the offender and rehabilitating him to adapt to elevated social values¹. The development of punishment in the modern era has thus led to the judge being granted a greater measure of discretionary power to substitute for the short-term penalty of imprisonment alternatives and measures that contribute to the social rehabilitation of the offender and to the correction of his conduct.

In view of the adverse effects of short-term custodial penalties, modern penal systems have moved towards adopting reformatory penal policies directed principally at making social rehabilitation an objective of punishment, by altering the scope of short-term custodial penalties and replacing them with a number of alternatives that enable the convicted person to execute them outside the walls of the prison, so as to avert the adverse effects that may otherwise be visited upon him².

The research problem

The problem of this study manifests itself clearly in the failure of custodial penalties — and in particular short-term ones — to achieve general and special deterrence in many offences, in a manner that produces counter-productive results leading to the aggravation of risks and the

¹Dr. Madani Abd al-Rahman Taj al-Din, "Alternatives to Short-Term Custodial Penalties in Comparative Criminal Law", Arab Journal for Security Studies, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia, vol. (33), no. (2), 2022, p. 219.

²Dr. Amin Mustafa Muhammad, The Science of Criminal Sanctions: The New Criminal Sanction between Theory and Application, Dar al-Jami'a al-Jadida for Publishing, Alexandria, 2008, p. 18.

disintegration of societies, quite apart from penal institutions which have begun to overflow with those held within them; this has burdened the treasury with additional financial losses that have increased the fiscal deficit of the State, over and above the social, individual, psychological and physical effects visited upon the convicted person, upon the family and upon society.

All of this will be examined by posing the following question: **To what extent is the alternative penalty effective in consolidating a policy of social reintegration of convicted persons by comparison with the short-term penalty of imprisonment?**

The importance of the research

The importance of the study lies in drawing the attention of official, community and individual actors within Jordanian society to the significance that calls for the provision of alternative penalties within modern penal policy and within the criminal justice system generally, given that the subject has not received the requisite study on the part of researchers and specialists in the field — being of recent introduction notwithstanding its practical importance. The subject is thus a novel one in Jordanian penal legislation.

Hence the present study, which seeks to shed light upon this modern system as an alternative to the penalty of imprisonment; a system which, if applied in practice, will project a positive image of the development of the judicial framework in Jordan.

The objectives of the research

This study aims to shed light upon the reality of custodial penalties generally and upon their individual and societal effects in particular, with a view to bringing into focus alternative penalties and to drawing attention to the need to redraft and amend legislation, including in the following respects:

1. the preparation of joint working mechanisms (plans) with the relevant bodies (official bodies and civil society organisations), with a view to arriving at the optimal application of alternative penalties;
2. the transformation of the purpose of punishment generally into community benefits capable of producing a more cohesive and more advanced society;
3. bringing about a change in the thinking underlying penal policy in Jordan, and moving it from execution by means of deprivation of liberty to alternative means consonant with the achievement of reform and rehabilitation;

4. the enactment of alternative penalties as penalties directed in the first place towards the public benefit and towards achieving general and special deterrence of the convicted person, without disrupting the interests of that productive individual, and in addition reducing the costs of accommodating inmates in correction and rehabilitation centres.

The research methodology employed

This study has relied upon three scientific methodologies, namely: the analytical method, the descriptive method and the comparative method. Legal texts have been analysed and described, together with a number of doctrinal opinions and judicial decisions relating to alternative penalties, and compared at times with French penal legislation, with a view to arriving at the findings and recommendations of the study, in accordance with an inductive and analytical scientific method, being the most appropriate for legal studies.

The plan of the research

This study is divided as follows:

Chapter One: The concept of alternatives to custodial penalties

Section One: Definition of alternatives to custodial penalties

Section Two: Justifications for alternatives to custodial penalties

Chapter Two: The scope of alternatives to custodial penalties

Section One: Characteristics of alternatives to custodial penalties

Section Two: Forms of alternatives to custodial penalties

Chapter One: The Concept of Alternatives to Custodial Penalties

The penalties of imprisonment and detention are among the most widespread penalties in the world, as is confirmed by the statistics relating to punishment³. In view of their negative aspects — represented in the overcrowding of prisons with offenders and the intermingling of first-time offenders with recidivists, to which must be added the considerable expenditure borne by the treasury of the State in respect of these prisons — many States have resorted to replacing custodial penalties with alternatives to such penalties, such as suspension of the execution of the sentence,

³Muhammad Salih al-Anzi, *Modern Trends in Alternative Penalties*, unpublished master's thesis, University of Jordan, Amman, Jordan, 2014, p. 1.

recognisance and bail, community service, and other alternative penalties⁴, which are regarded as the most important means of achieving general and special deterrence and reform.

On that basis, this Chapter is divided into two Sections: the definition of alternatives to custodial penalties (Section One), followed by the reasons for the adoption of alternatives to custodial penalties (Section Two).

Section One: Definition of Alternatives to Custodial Penalties

Alternatives to the custodial penalty constitute the fundamental pillar and the important means of achieving general and special deterrence, of reforming convicted persons and of rendering them upright members of society, since they spare many non-dangerous convicted persons from entering prison⁵.

Alternatives to custodial penalties are therefore defined by setting out their meaning (Sub-section One) and thereafter their treatment in international instruments (Sub-section Two).

Sub-section One: The meaning of alternatives to custodial penalties

The meaning of alternatives to custodial penalties is addressed both linguistically and as a term of art, as follows:

First: Alternatives in the language: substitution and the substitute in the language signify replacement; to substitute a thing is to replace it with another and to adopt the latter in its place; and to substitute one thing for another is to make it a substitute for it⁶.

Second: Alternatives as a term of art: although the definitions differ in their formulation, they are in agreement as to their substance to a certain extent⁷. Alternatives have been defined as "the adoption of non-custodial means and penalties in place of resorting to imprisonment, whether the measures adopted are taken before, during or after the trial"⁸. They have also been defined as "the community measures adopted by society for the punishment of those who violate its norms and laws, being social measures directed at their reform and at the application of the penalty to them

⁴Dr. Thamer bin Sa'id Abdullah al-Ghamdi, Work for the Public Benefit as an Alternative to the Penalty of Imprisonment: A Field Social Study on a Sample of Specialists and Inmates of Correctional Institutions in the Makkah Region, accessed 7/10/2024, dated 25/5/2015, available at: <https://dspace.up.edu.ps>.

⁵Dr. Aisha Hussein al-Mansouri, Alternatives to the Short-Term Custodial Penalty: A Comparative Study, Dar al-Nahda al-Arabiya, Cairo, 2016, p. 389.

⁶Fu'ad Ifram al-Bustani, Munjjid al-Tullab, 3rd ed., Dar al-Mashriq, Beirut, 1941, p. 25.

⁷Dr. Abd al-Rahman bin Muhammad al-Turayman, Discretionary Punishment through Work for the Public Benefit: A Detailed Comparative Applied Study, doctoral thesis, Naif University for Security Sciences, Riyadh, 2013, p. 100.

⁸Dr. Muhammad al-Shinqiti, Types of Alternative Penalties Applied to Adults, working paper presented at the Forum on Modern Trends in Alternative Penalties, Riyadh, Saudi Arabia, 17–19/11/2011, p. 4.

by reason of their violation of the law without executing that penalty inside places designated for that purpose, or isolating them from society, in view of the many negative consequences entailed thereby; the adoption of alternatives to custodial penalties will accordingly mitigate the negative consequences of prison institutions at the economic and social levels"⁹.

While some take the view that the definition of the alternative penalty does not differ from that of the original penalty — in that it is a penalty imposed by the criminal legislature upon a person who has committed an offence or participated therein, in place of the original penalty of short-term imprisonment¹⁰ — its purpose being to prevent a person sentenced to imprisonment from entering a correctional centre, so that it is subject to all the principles governing the original penalty¹¹. It has likewise been defined as "a set of measures that take the place of imprisonment for the reform of the offender and the protection of the community, or for verifying the position of the accused and ascertaining his condition"¹².

From the foregoing it may be observed that the alternative penalty is subject to all the rules and principles governing the original penalty, whether as regards the conditions of its application — both being enacted by the legislature and applied by the judge — or as regards its jurisdictional basis; it is distinguished from the original penalty, however, in that it is not characterised by compulsion and coercion, for its execution is left to the free will of the convicted person, who may accept or refuse it; and if it is refused, the original penalty is applied, namely the deprivation of his liberty within correction and rehabilitation centres.

Accordingly, alternatives to custodial penalties may be defined as a set of reformatory measures imposed as an alternative penalty by the judge in place of the imprisonment of the convicted person, on condition that they achieve the deterrence of the convicted person and secure his reform.

Sub-section Two: Alternatives to custodial penalties in international instruments and conferences

⁹Dr. Ayman Abd al-Aziz al-Malik, Alternatives to Custodial Penalties: A Model for Reform in the Criminal Justice System, doctoral thesis, Naif University for Security Sciences, Riyadh, 2010, p. 12.

¹⁰Dr. Madani Abd al-Rahman Taj al-Din, Alternatives to Short-Term Custodial Penalties, op. cit., p. 222.

¹¹Dr. Kamil al-Sa'id, Alternative Penalties Applied to Minors, working paper submitted to the Forum on Modern Trends in Alternative Penalties, Riyadh, Saudi Arabia, 17–19/11/2011, p. 2.

¹²Dr. Yusr Anwar Ali and Dr. Amal Uthman, A Concise Treatise on Criminology and Penology, 2nd ed., no publisher, Cairo, 2012, p. 263.

Alternatives to custodial penalties constitute a modern penal system within penal policy, adopted by certain States more than a century ago; the system began in Spain in (1908), followed by the States of Europe and America¹³.

At the international level, the United Nations has — since the earliest stages of its existence — devoted attention to the identification of alternatives to custodial penalties, and has conducted numerous studies and research projects throughout the world which have contributed to influencing criminal justice policies and national procedures and practices. A number of international congresses on the prevention of crime and the treatment of its causes have been convened, on a periodic basis every five years, and have come to be known as the quinquennial congresses¹⁴.

These efforts came as an extension of the efforts exerted during the era of the League of Nations; since (1872) the International Prison Commission was established, holding its first official meeting in (1874) in Brussels, and subsequently becoming the International Penal and Penitentiary Commission. At the International Congress of London in (1887), recommendations for prison reform were submitted, laying down the standard minimum rules for the treatment of prisoners¹⁵.

The International Penal and Penitentiary Commission held a number of congresses, the most important of which were the Congress of Prague in (1930), concerning the individualisation of penal treatment; the Congress of Berlin in (1935); and the Congress of The Hague in (1950). The first United Nations congress was held in (1955), and these specialised international congresses have recommended, within their general framework, the adoption of alternatives to custodial penalties¹⁶.

These specialised international congresses are as follows:

1. **First Congress;** Geneva, which adopted the Standard Minimum Rules for the Treatment of Prisoners in (1955).
2. **Second Congress;** London, which adopted police services relating to juvenile justice in (1960).

¹³Bahzad Ali Adham, "The Concept of Alternative Penalties", article published on the Al-Hiwar al-Mutamaddin website, 7/10/2012, accessed 11/11/2024, p. 8, available at: www.ahewar.org/debat/show.art.asp.

¹⁴Dr. Fahd Yusuf al-Kasasbeh, "Proposed Legislative Solutions for the Adoption of Alternative Penalties in the Jordanian Penal System", Journal of Sharia and Law Studies, University of Jordan, vol. 40, no. 2, 2013, p. 732.

¹⁵Dr. Muhammad Abdullah al-Wraikat, Alternative Systems to the Penalty of Deprivation of Liberty: A Comparative Study, 1st ed., Dar Wael for Publishing and Distribution, Amman, 2017, p. 36.

¹⁶Dr. Muhammad Hafiz al-Najjar, The Rights of Prisoners in International Instruments and in Egyptian Law, Dar al-Nahda al-Arabiya, Cairo, 2012, p. 50 ff.

3. **Third Congress;** Stockholm, for the study and analysis of the relationship between criminality and social change in (1965).
4. **Fourth Congress;** Japan, for the study of crime prevention planning for economic and social development in (1970).
5. **Fifth Congress;** Geneva, which adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment in (1975).
6. **Sixth Congress;** Caracas, for the study of the prevention of crime and the quality of offenders in (1980).
7. **Seventh Congress;** Italy, from which emerged the adoption of the Milan Plan of Action and numerous new United Nations standards and norms under the slogan (Crime Prevention for Freedom, Justice, Peace and Development) in (1985).
8. **Eighth Congress;** Cuba, for the study of organised crime and terrorism under the slogan (International Crime Prevention and Criminal Justice in the Twenty-First Century) in (1990).
9. **Ninth Congress;** Egypt, for the study of international cooperation and practical technical assistance for strengthening the rule of law, under the slogan (For Security and Justice for All) in (1995).
10. **Tenth Congress;** Vienna, at which the (Vienna Declaration) was adopted, under which Member States undertake to strengthen international cooperation in combating international crime and to reform the criminal justice system, in (2000).
11. **Eleventh Congress;** Bangkok, at which the (Bangkok Declaration) was adopted, an important policy document laying the foundations and clarifying the direction towards strengthening cooperation and coordinating international efforts for the prevention and combating of crime, in (2005).
12. **Twelfth Congress;** Salvador, for the study of crime prevention and criminal justice in (2010).
13. **Thirteenth Congress;** Qatar, under the slogan (Crime Prevention and Criminal Justice), for the study of confronting the risks threatening the world by reason of transnational organised crime, in (2015).¹⁷

¹⁷These congresses, together with their recommendations and outcomes, are available at: www.un.org/ar/events/crimecongress.

Alternatives to the custodial penalty have today become one of the constants of criminal policy and a pillar of criminal justice, and have been incorporated into numerous United Nations guidance memoranda. Thus, for example, the United Nations Standard Minimum Rules for Non-custodial Measures, the adoption of which was recommended by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Caracas from (25 August to 5 September 1980), were adopted by the General Assembly in its resolution (35/171) of (15 December 1985). At the Sixth United Nations Congress held in Caracas — referred to above — for the study of the prevention of crime and the quality of offenders in (1980), the Eighth Recommendation of the Congress affirmed the need to work for the wide dissemination of alternative measures throughout the world by incorporating them into criminal legislation, and the necessity that legislative authorities devise alternatives suited to the social and cultural conditions of each country¹⁸.

Likewise, at the Seventh United Nations Congress held in Milan in (1985), it was resolved that all successful measures and procedures should be adopted to address the phenomenon of overcrowding among prisoners, and that imprisonment should so far as possible be replaced by alternative measures, with a view to the rehabilitation and reintegration of convicted persons into society, they being an indivisible part of the social fabric, and with a view to returning them as active members of society. In its Recommendation No. (16), the Congress emphasised the need to adopt the measures necessary to address the phenomenon of the accumulation of prisoners, and to replace — so far as possible — the penalty of imprisonment with alternative measures apt to reintegrate convicted persons into social life as active members; and, affirming that measures not requiring detention constitute a humane means of facilitating rehabilitation, its recommendations included the following:

1. It is recommended that Member States increase their efforts to reduce the adverse effects of imprisonment.
2. The Committee on Crime Prevention and Control is requested to undertake a study of the question of sanctions not requiring detention, and of measures directed towards the social integration of offenders, having regard to a number of considerations¹⁹.

Alternatives to custodial penalties likewise featured prominently at the International Prison Congress held at the University of Leicester in England on (8/10/1994), which recommended the

¹⁸Muhammad Salih al-Anzi, *Modern Trends in Alternative Penalties*, op. cit., pp. 36–37.

¹⁹Dr. Ahmad al-Barrak, "Alternative Penalties between Reality and Aspiration", research published on the internet, 19/1/2015, accessed 2/11/2024, p. 6.

reduction of the imposition of custodial penalties so as to avoid their adverse effects²⁰. In application thereof, the United Nations in (1990) laid down a set of rules proposing alternatives to imprisonment, namely the United Nations Standard Minimum Rules for Non-custodial Measures of (1991)²¹, in the belief that such alternatives may constitute effective means of dealing with offenders within the community, in a manner that serves both their benefit and that of society alike. These measures (alternative penalties) are, in brief, the following: (1) admonition, reprimand and warning; (2) conditional discharge of the delinquent or offender; (3) penalties affecting the legal status of the individual; (4) economic penalties and monetary sanctions; (5) orders for the confiscation of property and expropriation; (6) compensation; (7) placement under judicial probation; (8) suspended penalties; (9) community service orders; (10) referral to attendance centres to attend at specified times; (11) house arrest; (12) any form of treatment other than committal to penal institutions.

Section Two: Justifications for Alternatives to Custodial Penalties

There are numerous adverse effects entailed by the execution of custodial penalties, the most prominent of which are the following²²:

(a) Individual and psychological effects: custodial penalties afflict the convicted person with a range of serious psychological effects capable of amounting to a grave psychological and mental illness founded upon a sense of despair of life and of disharmony with reality; for the inmate who enters the penal institution for the first time as a delinquent emerges thereafter a professional in crime, in its many methods and forms, heedless of the consequences of this intractable condition²³. These effects may accordingly be summarised in a number of detailed points, as follows:

1. a sense of alienation and isolation within penal institutions, far from family and society, and subjection to constraints beyond his control;
2. criminal contagion (the transmission of criminality): the inmate who enters the penal institution for the first time as a delinquent emerges thereafter a professional in crime, in its

²⁰Bahzad Ali Adham, *The Concept of Alternative Penalties*, op. cit., p. 11.

²¹The United Nations Standard Minimum Rules for Non-custodial Measures of 1991, the adoption of which was recommended by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, and which were adopted by the General Assembly in its resolution 45/110 of 14 December 1991.

²²Dr. Sharif Sayyid Kamil, *Short-Term Imprisonment in Modern Criminal Legislation*, Dar al-Nahda al-Arabiya, Cairo, 1999, pp. 7–8; Dr. Ayman Ramadan al-Zayni, *The Short-Term Custodial Penalty and its Alternatives: A Comparative Study*, 5th ed., Dar al-Nahda al-Arabiya, Cairo, 2018, p. 44.

²³Dr. Qawadri Samet Jawhar, "The Drawbacks of the Short-Term Custodial Penalty", research published in the *Academic Journal for Social and Human Studies*, Department of Economic and Legal Sciences, University of Chlef, Algeria, no. 14, June 2015, p. 72.

many methods and forms, heedless of the consequences of this intractable condition; and this is among the effects shared with the social and economic effects²⁴.

3. a sense of indignation, dissatisfaction and aggression towards himself and towards others, and a heightened index of violence in all his reactions and conduct²⁵.
4. anxiety and fear of the future or of the unknown, depression and sleep disorders, and a sense of loss of self-confidence, self-contempt, frustration and humiliation²⁶.
5. a decline in health and moral standards within the prison, where the number of prisoners exceeds its absorptive capacity, which is a sufficient cause of the spread of diseases and epidemics and of undesirable habits and morals²⁷.

(b) Economic and social effects: these are the effects visited upon the individual and his family, directly affecting the economic position of the inmate, in that his source of livelihood is cut off, with the result that a form of material dislocation befalls the individual and his family²⁸.

Many prisoners, moreover, enter prison and live there without effort, toil or earnings; and when they leave prison they are attended by a sense of indifference and dependency, which deprives them of any sense of responsibility towards themselves. For that reason they may prefer to return to the life of prison as a solution to unemployment and dependency, and this results in the rejection of the convicted inmate — in the first place by his family and thereafter by society as a whole²⁹.

(c) The phenomenon of overcrowding in penal institutions: among the most prominent problems from which penal institutions suffer is the phenomenon of their overcrowding and congestion, which gives rise to considerable difficulty in the possibility of implementing health-care programmes within correction and rehabilitation centres in the presence of such congestion, and results in the breach of health requirements, the spread of diseases and the absence of aftercare³⁰.

²⁴Dr. Madani Abd al-Rahman Taj al-Din, *Alternatives to Short-Term Custodial Penalties*, op. cit., p. 227.

²⁵Muhammad Salih al-Anzi, *Modern Trends in Alternative Penalties*, op. cit., pp. 13–14.

²⁶Dr. Muhammad Abdullah al-Wraikat, *Alternative Systems to the Penalty of Deprivation of Liberty*, op. cit., p. 44.

²⁷Muhammad Salih al-Anzi, *Modern Trends in Alternative Penalties*, op. cit., p. 14.

²⁸Dr. Abd al-Rahman bin Muhammad al-Turayman, *Discretionary Punishment through Work for the Public Benefit*, op. cit., p. 85.

²⁹Dr. Ammar Abbas al-Husseini, *Principles of Criminology and Penology*, 2nd ed., Manshurat al-Halabi al-Huquqiya, Beirut, 2018, p. 409.

³⁰Dr. Futuh al-Shadhli, *Fundamentals of Criminology and Penology*, Munsha'at al-Ma'arif, Alexandria, 2006, p. 560.

Committal to penal institutions gives rise to the emergence of new problems for some of those committed, particularly where an individual is committed for the commission of minor offences that do not place him among professional criminals — such as a road traffic accident — since the committal of such persons together with professional criminals exposes them to the learning of new skills that may be socially undesirable, thereby increasing the likelihood of their affiliation to prisoner reference groups whose norms conflict with those of society at large. There are, moreover, the security burdens arising from the increase in the numbers of inmates sentenced to short-term penalties, as well as of persons in pre-trial detention, together with the corresponding absence or limited application of alternatives thereto, which adversely affects the security aspects relating to the security of the penal institution, in terms of the possibility of introducing prohibited materials such as sharp implements, narcotic pills and prohibited medical preparations, and the like³¹.

It should be noted that alternatives to the penalties of imprisonment possess numerous advantages and justifications for their adoption; in addition to their reform of the convicted person and his rehabilitation for reintegration into the social fabric, and to his deterrence and restraint, they also constitute a deterrent for every person tempted to commit an offence in the future, through the convicted person's certain and firmly rooted realisation that he will not escape punishment for his offence and that he will inevitably be punished for it; and although the alternative penalty replaces imprisonment, it will be imposed upon him in the light of the case study conducted in respect of him, his circumstances and his previous convictions³². Among the justifications for the application of alternatives to custodial penalties is the weakness of the capacity of society, of judicial and penal institutions and of all partners to achieve genuine reform of those punished, and to enable them to recover full membership of society in all its dimensions³³.

In order to avoid such problems, and so that the convicted person and the detainee may retain all their social circumstances and all their acquired advantages, alternative penalties have been adopted with a view to achieving better protection for convicted persons and sparing them the consequences of deprivation of liberty in all its effects, and thereby contributing to the reduction of crime, the reform of the offender and the achievement of benefits for society in all economic, social, political and reformatory fields, as justifications for these alternatives.

Finally, it may be noted that the application of custodial penalties has been curtailed and alternatives to imprisonment devised, since the reformatory purpose sought from punishment does

³¹Dr. Abdullah Abd al-Ghani Ghanem, *The Effect of Imprisonment on the Conduct of the Inmate*, Naif Arab Academy for Security Sciences, Riyadh, 1999, p. 47.

³²Dr. Muhammad Abdullah al-Wraikat, *Alternative Systems to the Penalty of Deprivation of Liberty*, op. cit., p. 48.

³³Dr. Ayman bin Abd al-Aziz al-Malik, *Alternatives to Custodial Penalties*, op. cit., p. 33.

not require the deprivation of the individual's liberty; rather, it is possible for the convicted individual to enjoy his liberty and to pursue his normal life while the penalty is being executed, where the convicted person does not constitute a criminal danger to the security of society or of its members. In that way the individual is preserved from the danger of the destruction of his social life, which may result in the dispersal of his family and its deviance, quite apart from the difficulty of his reintegration into society upon his return from executing the penalty, and given that the likelihood of the convicted person returning to crime is real, particularly if he finds himself unemployed³⁴.

This system is thus, by its nature, a judicial system by means of which the judge is able to substitute one penalty for another, whether before the penalty is determined or after judgment has been given, where execution of the original penalty is impossible or may become impossible, or where it is more appropriate to execute the alternative penalty than the original penalty having regard to the personal condition of the offender, irrespective of the type of offence. This system represents a means of the judicial individualisation of punishment, the judge enjoying under it, at times, absolute freedom, and at other times a relative freedom that expands or contracts, in carrying out the process of penal substitution³⁵.

Chapter Two: The Scope of Alternatives to Custodial Penalties

In the preceding Chapter we examined the grave effects of the custodial penalty, particularly the short-term penalty, and the most important problems to which it gives rise; it has become incapable of reducing crime on the one hand, and inhumane in the treatment of the offender on the other, which renders it unable to fulfil its purpose. For that reason, voices have been raised in recent years calling for penalties alternative to imprisonment, particularly since their purpose is not merely to relieve the prisons but also because of the many positive effects entailed thereby.

While official and quasi-official bodies commend what has been achieved by way of reform of prison conditions, and indicate that the prison constitutes an exemplary space for reform and rehabilitation in which human rights are respected and the prisoner enjoys all his rights, overcrowding remains a source of concern to all observers, in view of its repercussions for the provision of conditions of humane life and respect for internationally recognised rights³⁶.

³⁴Dr. Jasim Muhammad al-Antali, *Alternatives to the Short-Term Custodial Penalty: A Comparative Study in the United Arab Emirates, Egypt and France*, Dar al-Nahda al-Arabiya, Cairo, 2000, p. 127.

³⁵Dr. Ayman bin Abd al-Aziz al-Malik, *Alternatives to Custodial Penalties*, op. cit., p. 46.

³⁶Nabil Bahri, *The Custodial Penalty and its Alternatives*, unpublished master's thesis, University of Mentouri, Constantine, Algeria, 2012, p. 108.

On that basis, alternatives to custodial penalties are addressed in terms of their characteristics (Section One), followed by their forms (Section Two).

Section One: Characteristics of Alternatives to Custodial Penalties

Alternatives to custodial penalties are defined as: "penalties imposed by the judge in place of placing the convicted person in a penal institution under a sentence of imprisonment or detention; they are accordingly not a means of penal execution, but a penalty which the judge substitutes for the penalty of detention or imprisonment, and are thus subject to the principles governing punishment, namely: the legality of the alternative; its judicial character; its personal character; and that it comprises the requisite element of affliction, achieves the deterrence of the convicted person and secures his reform"³⁷. From this it may be understood that alternative penalties are distinguished by a set of characteristics that set them apart from custodial penalties, notwithstanding that they resemble them in certain respects. The most important of these characteristics may be set out as follows:

First: The legality of alternative penalties: the principle of the legality of offences and penalties is among the outcomes of the French Revolution, having been embodied in the Declaration of the Rights of Man and of the Citizen, which provides expressly, in paragraph (2) of Article Five³⁸, that: "Any conduct upon which the law has not imposed the cloak of prohibition may not be prevented, and no person may be compelled to perform an obligation not provided for by law." Article 8 of the Declaration likewise provides that: "No person may be punished save in accordance with a law in force and promulgated prior to the date of the commission of the offence, and applied in a lawful manner." This principle was subsequently enshrined in the French Penal Code promulgated in (1810), and was reaffirmed in the new French Penal Code, Article (113-3) of which provides that: "... No penalty may be imposed in respect of a felony or misdemeanour the constituent elements of which are not expressly provided for in a law, or in respect of a contravention not provided for in a regulation."

In sum: the judge is bound by the sanction which the legislature imposes in respect of the offence committed; it is not for the judge to lay down a special penalty, nor may he exceed the prescribed measure³⁹. In accordance with this conception, the prohibited conduct is defined and a specific penalty is prescribed for the perpetrator of that offence.

³⁷Dr. Muhammad al-Shinqiti, *Types of Alternative Penalties Applied to Adults*, op. cit., p. 4.

³⁸Dr. Madani Abd al-Rahman Taj al-Din, *Alternatives to Short-Term Custodial Penalties*, op. cit., p. 231.

³⁹Yassin Bouhental, *The Penal Value of the Custodial Penalty: A Study in Algerian Legislation*, unpublished master's thesis, University of Hadj Lakhdar, Batna, Algeria, 2012, p. 96.

As regards the legality of alternative penalties, Dr. Ayman Ramadan al-Zayni takes the view that "the conception of legality in relation to alternative penalties must become more flexible, in that the prohibited conduct is to be provided for in the legislative text in a definitive and certain manner, without prescribing a specific penalty for each pattern of conduct; rather, a number of alternative penalties are to be provided for as the sanction for the commission of the prohibited conduct, while the legislature grants the judge a discretionary power to determine the type and measure of the alternative penalty appropriate to each case individually. The determination of the type of penalty, its measure and its duration is accordingly subject to the discretionary power of the judge, in the light of his study of the file of the offender's case and of the appropriate alternative penalty. From this standpoint, it accords with the rules of justice in two respects: first, its proportionality to the gravity of the offence committed, having regard to its limited seriousness; and secondly, its regard for the personality of the offender, the circumstances in which he committed his offence, and its effectiveness in his reform and rehabilitation"⁴⁰.

Second: The judicial character of alternative penalties: a penalty may be pronounced only by judges, which applies equally to alternative penalties in accordance with the procedures required by legislation. The alternative penalty enjoys the same guarantee as the custodial penalty of imprisonment, namely that it may not be imposed save by a judicial ruling and pursuant to a fair trial hearing through which the offender may present his defence and establish his innocence⁴¹, and likewise identify the causes and motives that led him to commit the offence — all of which may be taken into consideration, whether when the judge determines the type of alternative penalty or its duration. The alternative penalty is nonetheless distinguished from the custodial penalty by its effectiveness in reform, rehabilitation and the achievement of deterrence in its general and special senses, and by the avoidance of the adverse effects of the custodial penalty⁴².

Third: The personal character of alternative penalties: by this is meant that the alternative penalty may be imposed only upon the person who committed the criminal act and upon no other. The principle of the personal character of punishment is embodied in alternative penalties more fully than in the custodial penalty, which some consider to be of doubtful conformity with this principle, given the many adverse effects of that penalty, the reach of which is not confined to the

⁴⁰Dr. Ayman Ramadan al-Zayni, *The Custodial Penalty*, op. cit., pp. 97–98.

⁴¹Dr. Muhammad Abdullah al-Wraikat, *Alternative Systems to the Penalty of Deprivation of Liberty*, op. cit., p. 52.

⁴²Yassin Bouhental, *The Penal Value of the Custodial Penalty*, op. cit., pp. 97–98.

convicted person but extends to the members of his family. These adverse effects are not present in alternative penalties, and where they exist they remain within a narrow compass⁴³.

Fourth: The fulfilment by alternative penalties of the functions of the traditional penalty: the general rule is that the penalties prescribed by law for any offence may be imposed only pursuant to a judgment issued by a court having jurisdiction. Among these guarantees is the personal character of the penalty, which means that it may not be visited upon any person other than the person criminally answerable for the offence, even if he be a member of the offender's family or one of his heirs⁴⁴. It is well known that among the functions of the custodial penalty are the achievement of justice and of general and special deterrence, through the rehabilitation and reform of the convicted person.

While the determination of the type of penalty will be subject to other criteria, to be established on the basis of a study of the offender's condition, alternative penalties fulfil the principal purpose of punishment, consisting essentially in reform and rehabilitation, through attention to the person of the offender and to the circumstances of the commission of his offence, and the preparation of a file on his case by a group of experts who prepare a study of his economic and psychological circumstances, as well as of the circumstances of the commission of the offence, and finally the preparation of a report by the committee as to the most appropriate means of treating the case, which assists the judge in choosing the penalty appropriate to each offender⁴⁵.

Section Two: Forms of Alternatives to Custodial Penalties

Alternatives to custodial penalties are of various kinds, and differ according to a number of factors, including the duration of the penalty imposed upon the offender, the conditions required to be fulfilled in his regard, and the period he has served or is to serve in detention. Serious thought as to an alternative to the penalty of imprisonment must accordingly become a strategy for all those engaged in planning in the field of penal policy, with a view to devising successful practical alternatives to the penalty of imprisonment, and not awaiting the deterioration of matters to a point beyond remedy. Many States of the world began serious reflection long ago, and it has been put into effect; the Arab States, however, began only a short time ago to experiment with some of the alternatives proposed, and their experience has been a hesitant one. In Jordan, the Jordanian

⁴³Dr. Ayman Ramadan al-Zayni, *The Custodial Penalty*, op. cit., p. 98.

⁴⁴See: Dr. Mahmoud Naguib Hosni, *Commentary on the Penal Code: General Part*, 6th ed., 1989, Dar al-Nahda al-Arabiya, Cairo, no. 746, p. 696.

⁴⁵Dr. Ayman Ramadan al-Zayni, *The Custodial Penalty*, op. cit., p. 103.

legislature adopted, by virtue of the most recent amendments made in (2017) to the Penal Code, the system of alternatives to custodial penalties.

This Section examines the forms of alternatives to custodial penalties within contemporary penal policy, namely alternative penalties in kind (Sub-section One), followed by alternative penalties restricting liberty (Sub-section Two).

Sub-section One: Alternative penalties in kind

Contemporary penal policy has moved towards a reformatory orientation founded upon the adoption of alternative measures in kind to the penalty of imprisonment, with a view to reform and rehabilitation outside the walls of the prison. There are accordingly three forms of alternative penalties in kind, namely: the criminal fine; confiscation; and compensation and reparation of the damage caused by the offence. These are set out in the following points:

First: The criminal fine: the fine is the most widespread alternative penalty in penal practice within modern criminal legislation, given that it is a penalty of utilitarian and reformatory benefit at one and the same time. Its utilitarian benefit is realised in achieving general and special deterrence, while its reformatory benefit is realised in the reform of the offender by punishing him for the offence he has committed⁴⁶.

The Jordanian legislature adopted the fine as a criminal penalty, and not as an alternative penalty, in the Jordanian Penal Code No. (16) of (1960) by virtue of Article (22) thereof, which was amended by the Amending Law No. (27) of (2017) so that its text reads: "The fine: it is the obligation of the convicted person to pay to the treasury of the Government the amount assessed in the judgment; it ranges between five dinars and two hundred dinars, unless the law otherwise provides ..."

We therefore consider that, notwithstanding its many advantages, the criminal fine gives rise to a number of problems; it may, moreover, be converted into the penalty of imprisonment if the convicted person fails to pay it. Notwithstanding its drawbacks, it remains one of the practical alternatives capable of application in respect of certain serious offences.

Second: Confiscation: confiscation is the transfer of the ownership of a specific asset to the State without consideration; that is to say, the appropriation of the ownership of moneys or things that have been used, or were intended for use, in the commission of an offence, or that were obtained

⁴⁶Ayman Ramadan al-Zayni, *The Custodial Penalty*, op. cit., p. 344.

from its commission — as in the Egyptian Penal Code in Articles (24 and 30) — whereas other legislation treats it as a preventive measure, as in the Italian Penal Code⁴⁷.

Third: Compensation and reparation of the damage caused by the offence: this alternative consists in the appropriation of a portion of the financial resources of the offender in order to compensate the victim for the damage sustained by him as a result of the offence committed⁴⁸. This means is among the most equitable of alternative penalties; Jordanian law treats compensation, restitution and restoration of the position to what it was previously as civil obligations, in accordance with Article (42) of the Penal Code⁴⁹.

Sub-section Two: Alternative penalties restricting liberty

The fundamental idea underlying these penalties is the restriction of the liberty of the convicted person in the conduct of the affairs of his life, without depriving him of it entirely⁵⁰. This penalty takes a number of forms, which are set out in the following points:

First: Suspension of the execution of the penalty: by the suspension of the execution of the penalty is meant that system whereby the judge pronounces the penalty and orders the suspension of its execution for a specified period; if the convicted person does not commit any offence indicative of his criminal dangerousness, and thereby establishes his good conduct during that period, the sentence of punishment lapses and is deemed never to have been pronounced, and it is not even entered in the record of previous convictions. Once the suspension of execution becomes final, the judicial ruling issued against the accused is deemed never to have been made⁵¹.

Suspension of execution presupposes proof of the commission of the offence, the availability of all its constituent elements and the deserving of punishment by its perpetrator; the legislature has, however — within specified limits and by way of the discretionary power of the judge — provided that the convicted person may be exempted from the execution of the penalty during a specified period which serves as a period of probation for him⁵².

It also signifies the conviction of the accused and the suspension of the execution of the penalty imposed upon him subject to a suspensive condition; if the condition is not fulfilled within a period

⁴⁷Dr. Ahmad al-Barrak, *Alternative Penalties between Reality and Aspiration*, op. cit., p. 12.

⁴⁸Dr. Aisha Hussein al-Mansouri, *Alternatives to Custodial Penalties*, op. cit., p. 96.

⁴⁹Dr. Fahd Yusuf al-Kasasbeh, *Alternative Penalties*, op. cit., p. 739.

⁵⁰Dr. Madani Abd al-Rahman Taj al-Din, *Alternatives to Short-Term Custodial Penalties*, op. cit., p. 239.

⁵¹Dr. Fahd Yusuf al-Kasasbeh, *Alternative Penalties*, op. cit., p. 742.

⁵²Dr. Omar Salem, *New Features of the System of Suspension of Execution in Criminal Law*, 1st ed., Dar al-Nahda al-Arabiya, Cairo, 1998, p. 9.

of time determined by law, the judgment of conviction is deemed never to have been made, whereas if the condition is fulfilled the penalty is executed in full⁵³. This system has been known as one of the measures of social defence, since it is sufficient in the case of offenders that they be threatened with the imposition of the sanction so that they do not return to the commission of crime⁵⁴.

The Jordanian legislature, for its part, introduced the system of suspension of the execution of the penalty into the Penal Code as amended by Law No. (9) of (1988). According to the text of Article (54 bis) of the Code, the system of suspension of execution is confined in its application to felonies and misdemeanours, to the exclusion of contraventions, whether the matter relates to imprisonment or to a fine, and to criminal and misdemeanour penalties in which the penalty of imprisonment does not exceed one year, subject to the condition that the convicted person's character, his past, his age or the circumstances in which he committed the offence give ground for the belief that he will refrain from the commission of crime. If, however, the convicted person breaches the conditions laid down by law and by which he is bound during the period of suspension of execution, the suspension may be revoked, and this occurs where a sentence of imprisonment for a period exceeding one month is passed upon the convicted person during that period in respect of an act committed by him before the issuance of the order suspending execution or thereafter, or where a judgment is issued against a beneficiary of conditional release prior to the order suspending execution of which the court was not aware at the time. Where the period of suspension of execution expires without either of the two situations in which the law permits the revocation of the suspension of execution having arisen, the original penalty and the accessory penalties lapse, the judgment of conviction is annulled and deemed never to have been made, the criminal effects flowing therefrom are extinguished, and it is not treated as a prior conviction for the purposes of recidivism.

The Jordanian legislature likewise added to the Penal Code, by virtue of the Amending Law No. (27) of (2017), a new provision, namely Article (54 bis 2), the effect of which is that the court may, when ordering the suspension of execution, impose one or all of the community reform alternatives, and may revoke them in two specified situations. This Article provides as follows:⁵⁵

⁵³Dr. Rana al-Atour, "The Fate of the Criminal Penalty", research published in the Journal of Sharia and Law, United Arab Emirates University, UAE, year 22, no. 35, July 2008, p. 67.

⁵⁴Dr. Samir al-Shinawi, The General Theory of Crime and Punishment in Kuwaiti Penal Law, Book Two, publications of the Saad al-Abdullah Security College, Kuwait, 1988, p. 289.

⁵⁵Dr. Muhammad Ali al-Salem al-Halabi, Commentary on the Penal Code: General Part, 3rd ed., Dar al-Thaqafa for Publishing and Distribution, Amman, 2017, p. 360 ff.

1. The court may, on the basis of a social status report and with the consent of the convicted person, save in the case of recidivism, order one or all of the community reform alternatives when ordering the suspension of the execution of the original penalty imposed in accordance with the provisions of Article (54 bis) of this Law.
2. The court may, on the basis of a social status report, revoke the community reform alternatives imposed and execute the original penalty imposed, in either of the following two situations:
 - (a) where the suspension of execution is revoked in accordance with the provisions of Article (54 bis) of this Law;
 - (b) where the convicted person, after being notified, deliberately fails to execute the community reform alternatives or falls short in executing them without an excuse acceptable to the court."

Suspension of execution accordingly presupposes proof of the commission of the offence, the availability of its constituent elements and the deserving of punishment by its perpetrator; the legislature has, however — within specified limits and by way of the discretionary power conferred upon the judge — provided that the convicted person may be exempted from the execution of the penalty during a specified period which serves as a period of probation for him⁵⁶.

Second: Judicial probation: this is a penal system founded upon reform and rehabilitation, presupposing the restriction of liberty by the imposition of obligations and submission to the supervision of a person⁵⁷. The Jordanian legislature has adopted judicial probation (judicial supervision) in respect of juveniles, to the exclusion of adult convicted persons, in Article (24/z) of the Juveniles Law No. (32) of (2014), which provides: "Judicial supervision: this consists in placing the juvenile in his natural environment under guidance and supervision, having regard to the duties determined by the court; the period of judicial supervision may not exceed one year, and this shall be in accordance with the following procedures⁵⁸:

1. The court issuing the supervision order shall appoint the conduct supervisor who is to supervise the juvenile during the period of supervision; and if the said supervisor is unable

⁵⁶Dr. Omar Salem, *New Features of the System of Suspension of Execution in Criminal Law*, op. cit., p. 9.

⁵⁷Dr. Muhammad Sayf al-Nasr Abd al-Mun'im, *Alternatives to the Custodial Penalty in Modern Criminal Legislation*, doctoral thesis, Cairo University, Cairo, Egypt, 2004, p. 329.

⁵⁸Dr. Muhammad Abdullah al-Wraikat, *Alternative Systems to the Penalty of Deprivation of Liberty*, op. cit., p. 67.

to perform his duties for any reason, the Director of the Directorate may request the judge of execution of judgment to appoint another supervisor to execute the supervision order.

2. The court shall deliver a copy of the judicial supervision order to the conduct supervisor and another copy to the juvenile, and shall send a copy thereof to his guardian, custodian or the person responsible for his care.
3. The court shall, upon issuing the supervision order, determine the period of the order and the number of reports which the conduct supervisor is required to furnish to it on the condition of the juvenile.
4. Where it is decided to impose a judicial supervision order upon a female, the conduct supervisor must be female.
5. The court that issued the supervision order may, upon the application of the conduct supervisor, of the juvenile or of his guardian, revoke or vary the said order, after considering the report of the conduct supervisor in that regard.
6. The court may revoke the supervision order where the juvenile is convicted of an offence during the currency of that order, unless the original penalty for the act is a fine."

Third: Conditional release: the idea of releasing certain offenders from prison before the expiry of their sentences and under organised supervision is better than awaiting their release in a random manner without any supervision or oversight⁵⁹. Conditional release ensures for the convicted person a graduated approach in treatment and prepares him naturally for a life of full liberty, and represents a transitional stage between deprivation of liberty and final release⁶⁰.

Fourth: Electronic monitoring: the system of electronic monitoring (LA surveillance electronique) rests upon the idea of leaving the person sentenced to a short-term custodial penalty at liberty, while subjecting him to a number of obligations and monitoring his compliance therewith electronically and remotely. This is achieved technically by placing an electronic band on the ankle of the convicted person which transmits a signal with a range of fifty metres every thirty seconds; these signals are received by a device installed in a place determined by the judge

⁵⁹Dr. Abdullah bin Abd al-Aziz al-Sa'id, *Community Measures as Alternatives to Custodial Penalties*, Naif Arab Academy for Security Sciences, Riyadh, 2003, p. 124.

⁶⁰Dr. Ramsis Behnam, *The General Theory of Criminal Law*, Munsha'at al-Ma'arif, Alexandria, 2008, p. 1119; Dr. Mahmoud Naguib Hosni, *Commentary on the Penal Code*, op. cit., p. 747.

of the execution of penalties, and connected to the follow-up centre located in the penal institution by means of a telephone line⁶¹.

It is beyond doubt that this means does not apply to all persons sentenced to a short-term custodial penalty, but only to those convicted persons who possess the capacity to integrate into society by continuing their studies, their work or their treatment.

It is apparent from the foregoing exposition that there is a clear distinction between work for the public benefit and the system of electronic monitoring. Notwithstanding the unity of purpose of the two systems — namely the alleviation of congestion within the penal institution and of the harmful effects flowing therefrom, in addition to the rehabilitation and reform of the convicted person by way of his reintegration into society — and notwithstanding that the consent of the convicted person is a condition for the application of either of them, the difference between them lies in their nature and their essence. As to nature, work for the public benefit is a penalty pronounced by the judge, whereas electronic monitoring is no more than a modern means of executing the custodial penalty outside the geographical confines of traditional prisons. As to essence, work for the public benefit is the obligation of the convicted person to perform specified work determined by the competent authorities, in the choice of which his will plays no part, whereas electronic monitoring entails the obligation of the convicted person to remain in his home during specified hours outside the hours of work, study or treatment^{62 63}.

Fifth: House arrest or community supervision: this consists in determining the compulsory residence of the convicted person in a specified place, and is among the measures provided for in numerous penal statutes⁶⁴; these have, however, differed as to the determination of its nature⁶⁵: some have treated it as an alternative to the penalty of imprisonment, as in French legislation⁶⁶; while others have treated it as among the preventive measures for confronting cases of criminal dangerousness in certain categories of offenders, as in Jordanian legislation, which included in the

⁶¹Dr. Omar Salem, *Electronic Monitoring: A Modern Method of Executing the Custodial Penalty outside Prison*, Dar al-Nahda al-Arabiya, 1st ed., 2000, p. 10.

⁶²Dr. Rif'at Rashwan, *Work for the Public Benefit between the Requirements of Modern Penal Policy and Human Rights Considerations*, Dar al-Nahda al-Arabiya, Cairo, 2014, p. 25.

⁶³Dr. Rif'at Rashwan, *Work for the Public Benefit*, op. cit., p. 36.

⁶⁴Dr. Ahmad al-Barrak, *Alternative Penalties between Reality and Aspiration*, op. cit., p. 14.

⁶⁵Dr. Fahd Yusuf al-Kasasbeh, *Alternative Penalties*, op. cit., p. 738.

⁶⁶See Articles (131–132) of the French Code of Criminal Procedure.

Crime Prevention Law No. (7) of (1954) certain provisions and rules governing the measure of imposing house arrest⁶⁷.

In addition, the Jordanian Penal Code as amended by Law No. (27) of (2017), by virtue of the added Article (25 bis), has adopted community supervision as an alternative penalty ("community reform alternatives"), that Article providing as follows: "

1. Community supervision: it is the obligation of the convicted person to submit to community supervision for a period determined by the court of not less than six months and not more than three years.
2. Community supervision conditional upon submission to one or more rehabilitation programmes: it is the obligation of the convicted person to submit to a rehabilitation programme determined by the court and directed at the correction and improvement of the conduct of the convicted person."

Sixth: Community service (work for the public benefit): the penalty of community service is applied by obliging the convicted person to perform work without remuneration for the benefit of a public institution or of an association authorised to that effect⁶⁸. The Jordanian Penal Code as amended by Law No. (27) of (2017), by virtue of the added Article (25 bis), has adopted community service as an alternative penalty ("community reform alternatives"), that Article providing as follows: "1. Community service: it is the obligation of the convicted person to perform unpaid work for the service of the community for a period determined by the court of not less than (40) hours and not more than (200) hours, provided that the work is performed within a period not exceeding one year."

Conclusion: Findings and Recommendations

The system of alternative penalties is the outcome of the development of legislative penal policy; that policy has embraced a modern approach and has undergone a marked evolution, so that penalties have assumed, in their modern form, the aspect of reform and rehabilitation in a manner consistent with human needs and within defined standards and mechanisms of execution.

It should be noted that this research has addressed the subject of the legal regime of alternative penalties in Jordanian legislation and in international instruments, by setting out the concept of alternative penalties and their legislative scope at the international and national levels, and

⁶⁷Dr. Fahd Yusuf al-Kasasbeh, *Alternative Penalties*, op. cit., p. 729.

⁶⁸Dr. Ayman Ramadan al-Zayni, *The Custodial Penalty*, op. cit., p. 78.

identifying their principal forms, as a modern system of alternative penalties in the Hashemite Kingdom of Jordan.

The adoption of the system of alternative penalties is accordingly neither a dispensing with the original penalty nor its complete exclusion or the suspension of its operation; it is rather a partial and realistic alternative with which it is necessary to coexist.

Finally, this research has arrived at a set of findings and recommendations, as follows:

First: The principal findings

1. The adoption of the system of alternative penalties is not a legislative luxury, but a necessity dictated by the reality of the situation; this is a truth that cannot be denied and a requirement that must be observed.
2. The Jordanian legislature has devoted attention to the system of alternative penalties, as evidenced by the existence of legislative provisions regulating it; this attention is clearly apparent in the Law Amending the Penal Code No. (27) of 2017, which contains legal provisions addressing the subject of alternative penalties. There is, however, no general theory of alternative penalties in Jordanian legislation, but rather scattered provisions across a number of different statutes.
3. The application of alternative penalties will yield a range of benefits for the State, for society and for convicted persons; the application of these penalties must, however, be confined to convicted persons who are neither dangerous nor recidivist.
4. Alternative penalties are regarded as restrictive of liberty rather than deprivative thereof, since certain alternative penalties executed after the delivery of judgment may be regarded as a transitional stage between deprivation of liberty and complete liberty.

Second: The principal recommendations

1. We consider it necessary that alternative penalties be the subject of an in-depth study so as to identify their positive and negative aspects, particularly after their application in practice, and to determine whether these penalties have achieved their intended objectives.
2. We consider it necessary to adopt a general theory of alternative penalties within the framework of the Penal Code, comprising the types of these penalties, the means of imposing them and the mechanisms of their application.

3. We consider it necessary to benefit from the experiences of certain States that are pioneers in the field of the application of alternative penalties, and to draw upon certain model laws that have addressed this subject.
4. We consider it necessary to establish a form of cooperation among the various bodies concerned with the application of alternative penalties.

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7. The French Code of Criminal Procedure.