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RESEARCH ARTICLE

Alternative sanctions and environmental protection in the light of the preliminary draft of the Moroccan penal code

Professor Bouchra Nadir

Head of Private Law Department at the Faculty of Legal and Economic and Social Sciences Rabat Morocco.

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*Corresponding Author

Professor Bouchra Nadir

Abstract

Today the context is marked by the expansion of technical offenses abounding criminal law, breaches of criminal rule and the difficulties of implementing criminal sanctions that disproportionately affect the environment, perceived as risk-taking severe, call for new corrective responses. Modern penal policy has invented a set of alternatives that resemble two main branches: The social alternatives inspired the work of Marc Ancel and his theory called modern social defense, and economic alternatives to apply to corporations that threaten over the environment. That is why the draft bill on criminal law and criminal procedure in Morocco has scheduled these penalties in the first section titled alternative sanctions in articles 35-1 to 35-15 and understood that these sentences be truly new tools available to the judge and not mere substitutes for imprisonment. These penalties may be imposed as punishment for both offenses imprisonment for those punished with fines. It is indeed new penalties, in itself, can be pronounced as principal. Alternative sanctions offer varied and original sanctions which are likely to be, in most cases, appropriate responses to the fight against environmental crime. It is therefore necessary to consider the place that the preliminary draft of the penal code their reserve, the ability to apply them to environmental crime and the conditions of their execution, taking into account geographical, physical and human local specificities.

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Introduction:-

Today the context is marked by the expansion of technical offenses abounding criminal law, criminal expansion of mass litigation, breaches of criminal rule and the difficulties of implementing criminal sanctions that disproportionately affect the environment, perceived as a serious risk taken, call corrective responses news.

It is in this context that the voices have to find alternatives. It is already on the train the flexibility of sanctions¹; We must remember that the flexibility of criminal sanctions does not mean their softening but their adaptation in all directions and this acceleration flexibility does not necessarily mean a threat to the right when assumed, it replaces the ineffectiveness of criminal involuntary response. Modern penal policy has invented a set of alternatives that resemble two main branches: The social alternatives inspired the work of Marc Ancel and his theory called modern social defense, and economic alternatives to apply to corporations that threaten as the environment.

That is why the draft bill on criminal law and criminal procedure provides for these penalties in the first section titled alternative sanctions in articles 35-1 to 35-15 and understood that these sentences be genuinely new tools made available to the judge and not mere substitutes for imprisonment.

¹ - Dan Kaminski (2013), "The flexibility of sanctions", XXI Legal Days Jean Dabin, Ed, Bruylant, Brussels, p. 724.

These penalties may be imposed as punishment for both offenses imprisonment for those punished with fines. It is indeed new penalties, in itself, can be pronounced as principal².

Alternative sanctions offer varied and original sanctions which are likely to be, in most cases, appropriate responses to the fight against environmental crime.

It is therefore necessary to consider the place that the preliminary draft their reserve, the ability to apply them to environmental crime and the conditions for their implementation.

Part One : Alternative sanctions and environmental protection:-

The foundations of alternative sanctions are in modern social defense theory of Marc Ancel is a pioneer of this theory; he called to review the traditional criminal penalties for social retraining of agents (authors repressed facts) considering that these penalties should not punish the criminal act but a protective action of the company. Criminal responsibility is proportional to the dangerousness of the criminal act and the result is difficult to apply in addition to the ethical responsibility. The author Raymond Saleilles, who in one of his rare trials in criminal law, "The individualization of the penalty," looking about the balance of the sentence is to torment, and defends the sentence is a social purpose³.

Saleilles argues in his book that if the offender is not completely unrecoverable, the penalty should not corrode even more, but needs help to rehabilitate themselves.

For its part, the German author Von Liszt, author of *Der Zweckgedanke im Strafrecht*, published in 1882, the just penalty is a necessary punishment, unlike retributive Kantian thought, that the penalty is compensation for evil.

For its part, the Moroccan doctrine has emphasized to find alternative solutions especially for people with professional qualifications that would be useful to put in the service of society instead of being imprisoned them⁴.

We hope that after the adoption of this project it will be possible to apply also against those responsible for environmental offenses instead of custodial sentences for a short time.

The criminal alternatives will remedy the weakness of the criminal justice system and environmental requalification of offenders to prevent their recurrence for better protection of the environment. These measures can be translated into community service and making the judicial test.

A- The community work:-

The community service is an alternative to short prison sentences. The High Court is defined as unpaid work for the benefit of a legal person of public or private law, for a limited time by the judge and is unpaid. It is applied only for seniors at least 15 years old at the time of the commission of the offense and the penalty period does not exceed two years imprisonment.

Specifically, the court, after obtaining the consent of the person concerned on the principle of the trouble, fixed working hours, between 40 and 600 hours, to complete within a period of 12 months, with possibility to extend the time. It is the judge of the application of penalties which is responsible for determining the work to be done in terms of available jobs, thus ensuring the individualization of punishment depending on the personality of the convict. It was also he who keeps track and control of the measure, which may compel the applicant to special measures of control and enter the public prosecutor in case of total or partial breach of labor.

²- Jerome Lasserre Capdeville (2005), "The criminal law of the environment: a right still has a formidable appearance and the questionable efficacy", in under the direction of Roselyne Nérac-Croisier, "Saving the environment and criminal law", The Harmattan, p. 55.

³- Adalberto Carim antonio (2011), *Alternatives penalties in the world*, Thesis for doctorate in private law and criminal sciences, University of Limoges, p.12.

⁴- See the proceedings of the conference held in Ifrane November 14 to 17, 2000 under the theme "Alternative deprivation of liberty" and Meknes conference on criminal policy in Morocco held from 9 to 11 December 2004 reiterated same vow.

To educate, rather than simply punish, agreements between floors and actors in nature protection possible to offer educational courses to ecology to certain "green" offenders. The floors, based on environmental protection groups and managers of natural areas, are implementing awareness-raising measures, alternative to court action.

Generally, the scope is limited to persons who have committed offenses with low environmental impact, by apparent lack of information: use of motor vehicles, forest fire, failure to comply with hygiene arrested, detained wildlife. Are, of course, apply to repeat offenders or people who benefit economically from such offenses.

The conquest of a ecocitizenship reaction requires an explanation⁵. The emergence of ecological awareness necessarily requires education and information on the matter⁶.

And TIG may include citizenship courses. The structures responsible for organizing internships (administrations, local government associations, natural areas managers) see it as an opportunity to speak of ecology at new audiences, generally unconvinced advance. For example, for offenses relating to reserves, this type of training is empowering for young offenders, unlike a fine to be paid by the parents. ". Thereby attempting to curb social deviances, especially within a community. The penalty is intended educational, reconstructive social ties so that the offender means his desire to remain a member of the group or reconnect⁷.

Taking into account the needs of Moroccan society, we propose in this work:

- Participation in cleanliness campaigns organized by associations;
- Get involved in raising awareness of environmental protection, up chairs and tables in parks and public places and participate in its maintenance;
- Participate in the cleanliness of freshwater and develop areas for different sports;
- Participate in reforestation, clean beaches and maintenance of historical monuments.

Thus ecological offender become a useful element to the society in general and particularly to the environment. The community service by the corporation consist of funding programs and of environmental projects; reclamation of degraded areas of work; maintenance of public spaces; contributions to environmental associations or public culture⁸.

The success of this measure owes much to the important work of the judges of enforcement of sentences to convince local government officials, public institutions like hospitals or certain leaders of associations of the need not only to create such workstations of general interest, but also to assign it the necessary framework to ensure proper care of persons sentenced to carry out such a sentence. This effort must be renewed every moment to ensure the quality of jobs offered⁹.

These alternatives can bypass lawsuits, and time-consuming procedures. They also ensure that even the "small" criminal offenses find answer.

The penalty of community service may seem easy to apply but this is without considering the reluctance of public opinion that can be considered to offer the job to a person purporting to be a prisoner in its most classical sense (enclosed within four walls). In addition, any reluctance of judges to impose an alternative sentence to prison can be explained by the lack of information available with regard to the social, family or professional of the convicted.

There is thus a certain inequality of persons convicted of the facts alleged against them vis-à-vis the effective access to alternative sanctions.

⁵- Marie Méline Berthelot and Sophie Heyd Aten(2013), "Environmental Crime, punish or educate?", "In Natural Areas, No. 44, p. 39.

⁶- Nadia Belaidi (2008), "The fight against global environmental damage: towards an ecological public order" Bruylant, p. 423.

⁷- Nadia Belaidi, *ibid*, p. 419.

⁸- Adalberto Carim Antonio, *Alternatives penalties in the world*, *ibid*, p 337

⁹- Dominique Gaillardot (1994), "Alternative penalties" In: International Journal of Comparative Law, No. 2, pp. 683-693.

B- Testing:-

The testing is a punitive system aimed at the requalification of a person at liberty conditioned by obligations under surveillance. If unsuccessful, the custodial sentence is enforced.

Thus it is possible to apply the tested environmental offenders to prevent recidivism. The judge suspended the prison sentence and the offender is entrusted to the auxiliary of deprivation which supports education for the protection of the environment.

1 / Effects of probation:-

Possibility of suspending the application of the custodial sentence during the trial period. If successful, the sentence may be considered non-existent. But if that fails, the custodial penalty is applied because the recipient was not at the height of the favor that was granted.

2 / Submission of the convicted control and obligations:-

This type of sentence has the merit of actually encourage the offender to respect the environment under judicial enforcement of penalties or any person or authority designated for that purpose. This avoids the offender and the community expenses relating to his imprisonment. The deprivation remains suspended until the person runs, which is an effective weapon in contrast to the only sentence suspended sentence, which it applies, according to the Moroccan criminal law, for any subsequent offense during the five years following the offense or crime.

C- Financial Alternatives and Environmental Protection:-

Financial alternatives are effective for protecting the environment. It is :

1/ The daily fine:-

It is proportional to the severity of the damage to the environment and income if the person is physically. It is payable on expiration days of the sentence unlike conventional fines that are required immediately after the judgment.

Around the world, this kind of punishment is very common. In Germany, 97.3% of offenses against the environment in terms of financial penalties were in 1984. In Finland, the fine can be up to 120 days and is about a third of the income of the convicted.

In the US, the fine relating to the oil pollution ranges from £ 2,500 to £ 25,000 a day, it is doubled in the event of deliberate act. In Quebec, where air pollution is the daily fine of £ 200 to £ 5,000 for individuals and 600 to £ 30 000 in the case of legal persons. This fine is doubled for subsequent offenses.

In our opinion, the criminal liability of legal persons is justified by the mere fact that it is the large companies that are the real polluters and are able to cause more serious offenses than individuals. Legal persons are tempted not to observe the protections of the environment by saving costs, fines must be so substantial to prevent such behavior, but not without excess so that they are effective. The daily fines applied to natural persons must take into account the income for more equity.

2/ The application of the polluter pays principle:

The polluter relatively well adapted to the environment, reduces the interest of certain criminal provisions. The fee for pollution may also play this role. Morocco is called more than ever to apply this tax for the following two objectives:

- Financial Objective : The revenues collected will be paid into a national fund and local funds for environmental protection. They will finance studies, preservation and installation of clean development projects and compensation for victims of pollution.
- Environmental objective : The objective of the pollution tax to change the working methods among polluters to reduce or avoid tax.

Where environmental damage are, in general, the structure of the production process, the general choice of equipment are involved. These elements emerge the sole responsibility of the head of enterprise and can not normally be delegated object¹⁰.

Since the company's head may be declared criminally responsible despite the existence of the delegation. A good calculation of the rate of the fee for water pollution or air has a different deterrent than misdemeanor fines to insufficient rates, which will most often inflicted when the damage has already been done¹¹.

In the same aim, other sanctions may also be taken :

- Deprivation of benefits such as public assistance or tax exemptions;
- Prohibit corporations to invest in certain economic sectors, or banning the call to raise funds by subscription;
- Prohibit to contract;
- Prohibit to participate in tenders in public procurement for a period of up to five years;
- Publish the judgments reached in the environment in the newspapers, which seriously harms the brand image of the offender and the potential losses that it can cause it in its order book.

Alternative penal measures do not limit the freedom of the offender same as imprisonment. They do not require offenders to leave their families or society, to give up their business or their work activities.

Several positive changes can occur, such as awareness of the inmates of the importance of not breaking the law in force in society and therefore not to commit a new offense¹².

Part II : Conditions for performance of alternative sanctions and resocialization green offender:-

It appears from the above the importance and effectiveness of alternative punishments in relation to the deprivation of liberty. The Moroccan legislator is called to consider the generally and in the field of environment in particular taking into account specific local geographical, physical and human.

A- Risks and constraints for the application of alternative sanctions in environment:-

Legislative measures may be ineffective if they do not include all the protagonists of environmental protection through a participatory process. These combinations certainly requiring more imagination courts in determining the most appropriate sentence. This is certainly the price to pay to see the development of the use of these alternative sanctions. For it is not enough that the legislature multiplied alternatives. Still it is necessary that the judge there is recourse. And for this it is necessary that the judge is convinced that both the effectiveness of the effectiveness of the proposed new penalties. The penalty of community service may seem easy to apply but this is without considering the reluctance of public opinion that can be considered to offer the job to a person purporting to be a prisoner in its most classical sense (enclosed within four walls). In addition, any reluctance of judges to impose an alternative sentence to prison can be explained by the lack of information available with regard to the social, family or professional of the convicted.

There is thus a certain inequality of persons convicted of the facts alleged against them vis-à-vis the effective access to alternative sanctions.

The problems of application of such penalties are in the time between the imposition of the measures and their implementation but also in the effectiveness of control and in their ability to prevent recurrence. The period that runs between the judgment and enforcement is a fundamental challenge to develop the credibility of alternative sanctions. Studies in several countries and show that recidivism tends to be higher at the beginning of follow-up periods, which calls for extremely fast support.

B- Conditions of application of alternative sanctions for environmental success:-

¹⁰- Roselyne nérac Croisier, "Détermination of responsible persons ", in Editor Roselyne Nérac-Croisier, op. cit., p.87.

¹¹ Jerome Lasserre Capdeville, "the criminal law of the environment: a right still looks terrible and the questionable efficacy" in under the direction of Roselyne Nérac-Croisier Opcit, P 69

¹²- Adalberto Carim Antonio, *Alternatives penalties in the world*, ibid, p. 336.

The key to success is good communication between administrations. Thus, the upstream framing it allows the prosecution to build on the expertise of its partners: the administration of land in particular, overcomes the lack of technicality tribunal officers on the environment. Upstream frame the roles and clarifying the objectives of the device in a formal criminal policy. Supervision such courses by natural areas deserves preparation and reflection. Their educational and punitive virtues would be optimized if the content and meaning of the sentence were systematically explained during the procedure.

As for the training of judges, it must logically reflect these new concerns. First, judges including the legal and judicial bodies must be more aware of environmental issues in a consistent and specific training in environmental law, law of biotechnology, enrolling in a training perspective adaptation of legal and judicial skills to recent developments that knows the sector both nationally and international.

Once operational, it must give judges the ability to achieve these goals. Lighten their load and increase the judiciary appears as a salutary measure to better functioning of justice.

But the best way to avoid imprisonment is still avoid the penalty or avoid prosecution, is upstream of the imposition of the sanction that alternatives are sought directly.

The use of mediation is often to encourage the immediate compensation for damages and compensation for the victim. They are certainly as civil compensation means, essentially putting an end to the civil aspect of the case, but for which the state intervenes through the prosecution through the threat of prosecution.

Conclusion:-

If the project before the penal code has innovated in the field of alternative sanctions, even planned a wide and varied range of alternative sentences, must still rule on their effectiveness, their implementation and credibility. Alternative sanctions can be effective in preventing recidivism and offender resocialization green if the conditions cited above are previously established in terms of resources and communication.

Reference:-

1. Jerome Lasserre Capdeville (2005), "*the criminal law of the environment: a right still has a formidable appearance and the questionable efficacy*", in under the direction of Roselyne Nérac-Croisier, "Saving the environment and criminal law", The Harmattan.
2. Adalberto Carim antonio (2011), "*Alternatives penalties in the world*", Thesis for doctorate in private law and criminal sciences, University of Limoges.
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