

**The criminal justice effectiveness in combating the criminal risk****فعالية العدالة الجنائية في مواجهة الخطورة الإجرامية****Lahreche ayoub toumi**

University of Ammar Theliji Alaghout, Algeria,

droit.ayoub@gmail.com

تاريخ النشر: 2020-12-15

تاريخ القبول: 2020-12-10

تاريخ الاستلام: 2020-09-11

**Abstract:**

This study aims at shedding light on the criminal risk and the criminal justice role in eliminating and combatting it. The study also aims at identifying the extent of the criminal justice effectiveness, in fighting the criminal risk, through comparing the criminal legislations and the followed procedures.

**Keywords:** the criminal risk; the effectiveness; the criminal justice.

**ملخص:**

تهدف من خلال هذه الدراسة إلى محاولة تسليط الضوء على الخطورة الإجرامية ودور العدالة الجنائية في الحد منها ومواجهتها ومدى فعاليتها في ذلك، من خلال المقارنة بين التشريعات الجنائية والأساليب المعتمدة في ذلك. الكلمات المفتاحية: الخطورة الإجرامية؛ الفعالية؛ العدالة الجنائية.

## 1. INTRODUCTION

The crime is known since the creation of earth and the human being on it. It's inherent to the human existence, and even an ancient human behaviour. Since it's a complex negative social phenomenon from which the societies have been suffering, the idea of fighting it has been prevailing the human minds. Several studies have been carried out for figuring out the idea of fighting the crime and eradicating it. These studies have initially been based on pure philosophical principles focusing on studying the criminal materials. The punishment was the only mean for combatting it, but it was known by its cruelty. However, the major developments have paved the way for the scientific studies to analyse and interpret the criminal behaviour, which has been referred to an imbalance between the self and the mind within the human ego. Since then, the criminal personality has been held into account, since it's the source that should be controlled for the sake of processing and eradicating the bad personal, environmental, and social factors and circumstances helping the crime proliferation. So, a new theory in the criminal law has been established, which is the criminal risk theory.

The theory of the criminal risk, rather than the previous dominant theories, has significantly contributed in generating new perspectives for the criminal justice. It targets redressing and rehabilitating the criminal socially for the sake of protecting society. **Thus, to what extent does the criminal justice contribute in eliminating the criminal risk?** For answering this problematic, our study is divided into two sections. The first one is devoted for studying the criminal risk, whereas the second one is devoted for studying the criminal justice in fighting it.

## 2. The criminal risk

In this section, two key points will be addressed. The first one is to study the concept of the criminal risk, and the second one is to analyse it.

### 2.1 The concept of the criminal risk

Considering the theory of the criminal risk relative novelty, and the fact that's concerned with the criminal personality, it has faced a significant legal jurisprudential debate. there has been a variance in the opinions about it according to perspectives, as a result of being influenced by the various philosophical and penal theories. This variance has influenced identifying its nature and definition,<sup>1</sup> because of the opinions conflict resulting from being influenced by the various philosophical and penal theories between those who consider the criminal risk as a transient psychological situation making the person readier for committing crimes in the future, and those who consider it as a set of various psychological and social factors influencing the criminal personality, which make committing crimes probable in the future, if they're linked to

the person's behaviour. Another group consider the criminal risk as a legal regulation set for fighting a group of delinquent people, who are treated in a special way by the criminal law in accordance with the type and the extent of their risk.<sup>2</sup>

Despite the jurists' disagreement upon identifying the nature of the criminal risk, they've agreed upon some of its characteristics such as: it depends on real circumstances, it's figured out in the form of clear material signs, it's a psychological situation resulting from the interaction of several personal factors, it's a mere probability of committing a crime as a criterion for revealing the criminal's potential risk, it's a current persistent involuntary situation, and it's a relative premise.

The emergence of the criminal risk theory represents a new stage, which is necessary for identifying the differences and looking for the dividing line between this idea and some other similar ones.<sup>1</sup> Distinguishing between the criminal risk and the social one, which is prior to the crime commission, is so necessary. It's also necessary to distinguish between the criminal risk and the risk per se, since it's the description succeeding the result, which is the crime's material element, unlike the risk, which is the description of the perpetrator, and doesn't depend on the crime availability.<sup>2</sup>

## 2.2 Analysing the criminal risk

The criminologists have disagreed upon the factors influencing the criminal personality, and make him committing a crime in the future. A group of them have focused on the first type consisting in the personal factors and the features relating to the internal factors.<sup>3</sup> Whereas, another group have been concerned with the social and the natural factors surrounding the person. However, the modern criminology has proved that the criminal profile availability is in light of interacting the three reasons of criminality. Then, the criminal situation and personality is like a refinery negating the external effects fitting their subjectivity.<sup>4</sup>

The criminal factors play an important role in forming the criminal risk, which qualifies the person for committing the crime, since they create the impetus strength, and destroy the prevention one. The person's impetus and resistance have no fixed value, and they're in a continuous change according to the emerging circumstances and in light of that change's results. So, the criminal risk is available within the person, if he merely has a slight increase in the impetus, a slight decrease in the resistance, or both of them, as a probability for committing the crime. However, the relationship between them isn't merely limited to the identification of the availability of the criminal risk elements or not. It consists in the probability and the subsequent crime.<sup>5</sup> It's necessary for estimating the criminal risk extent whose importance in fighting the crime shouldn't be neglected. On the basis of this discrepancy, it's subject to change from one moment to another, thus they're increased and decreased until the total decrease.<sup>1</sup>

### 3. The criminal justice role in fighting the criminal risk

We've tackled, in this section, three main points. The first one is devoted for studying the criminal justice role in combatting the criminal risk throughout the legislative phase. The second one is devoted for studying its role throughout the judicial stage, and the third one is devoted for studying its role throughout the executive step, which is the time of the sanction execution.<sup>2</sup>

#### 3.1 The criminal justice role in fighting the criminal risk throughout the legislative phase

In any country, the criminal legislator looks for protecting society from the criminal's threatening behaviours through setting regulations for combatting them. Most of the criminal legislations criminalize the criminal risk. Some of them have criminalized the risk preceding the crime commitment, whereas others have criminalized the succeeding one, and another group of them have criminalized both of them. Nevertheless, the prevailing trend is criminalizing the risk succeeding the crime commission, while the preceding one has exceptionally been introduced to a limited extent for protecting the individual freedoms principle. The criminal legislator sets regulations for fighting the criminal risk to remove it or at least to reduce its effects.<sup>3</sup>

The positive criminal legislations' procedures, for fighting the criminal risk, have been different. Some of them have been limited to the conventional punishment, others have introduced indeterminate sanctions, others have been limited to the precautions, and others have combined both of sanction and precautions. The latter is the prevailing trend.

#### 3.2 The criminal justice role in fighting the criminal risk in the judicial stage

In this stage, the Judge checks all the elements related to the unsub and the crime so that he would be able to know all the circumstances surrounding them, especially those are related to the unsub, since the criminal personality and the criminal risk is the lawsuit focus, the estimation point, and the basis of individualizing the criminal sanction.<sup>4</sup>

The issue of proving the criminal risk availability, by the judge, is so important, since it's concerned with the procedure through which the criminal sanction is imposed according to this proof, hence it's important to know the procedure through which the judge is able to decide the extent of the criminal risk availability or not. This requires the judge's necessary knowledge through which he adjudicates the criminal risk existence. Thus, proving the availability of the criminal risk with the unsub should be followed with a very important issue, which is estimating the appropriate penalty type and term. As long as the criminal has a role in estimating the penalty, the judge is required to consider the unsub danger, and the risk becomes the focal point on which the penalty is based.<sup>1</sup>

Since the criminal personality and its risk are the focal point of the lawsuit, the estimation standard, and the basis on which the criminal penalty is individualized, the risk has a key role in arranging the penalty, determining its type and extent, and sentencing an additional sanction or the impunity or the moratorium. If the risk has ceased to exist, the sanction would have necessarily ceased to exist as in the moratorium. If the risk exists, and it's extremely dangerous, the penalty shall be aggravated, and it shall be reduced,<sup>2</sup> if the risk extent is low. So, the sanction is linked to the risk in terms of existence, non-existence, aggravation, and reduction.

The criminal risk impact, as a judicial standard, isn't limited to determining the penalty and its extent and type, it also includes estimating or choosing the precaution type, as the second mean for combatting crime besides the penalty.<sup>3</sup>

### **3.3 The criminal justice role in fighting the criminal risk throughout the executive step**

The criminal penalty's objective is to redress the dangerous criminals, rehabilitate, and socially integrate them. It's related to what the penal administration adopts including the legal regulation of the applicable penalty treatment methods. Since the criminals differ in terms of age, gender, and the mental or the psychological level, as well as their living conditions and criminal impetuses, all this requires the sanction individualization and choosing the appropriate effective treatment method,<sup>4</sup> which is based on the perpetrator type not on the crime. So, the dangerous criminal enters this penal institution, and his crime stays out of it. Therefore, most of the criminal legislations have several penal treatment methods, that are of a therapeutic, educational, ethical, and rehabilitative nature, in accordance with the scientific basics, i.e. on the basis of scrutinizing and categorising them. They're considered as an initial system for choosing the effective program helping the achievement of the criminal sanction wanted objectives, especially the deprivation of liberty, so that the dangerous criminal doesn't only want to return to society, he also wants and is able to live in light of upholding the law.<sup>1</sup>

## **4. CONCLUSION**

Our study has been concluded with several results proving that the criminal risk is one of the modern major transformations in the criminal policy. It becomes significantly important in the criminal and penal sciences, thus it plays a crucial role in the criminal system, and significantly contributes in developing many of its principles. The adopted criminal justice, by the criminal legislations, has proved its effectiveness in fighting and eliminating the criminal risk to a certain extent.

## **5. Bibliography List :**

- **Books :**

- Asua. D (1953), la systématisation juridique de l'état dangereux, deuxième cours international de criminologie, paris;
- Dell Andro. R (1959), la recedivanelementariadellanormapenale;
- Ferri (1928), principi di dirittocriminale, torino;
- Garofalo. R (1892), la criminologie, paris;
- Garraud. R(1913), Traité théorique et pratique de droit pénal français;
- Herzog (1953), Le problème de l'état dangereux en Amérique latine, Deuxième cours international de criminologie;
- Loudet. O (1955), le diagnostic de l'état dangereux méthodologie, Actes du 11 congrès international de criminologie, paris;
- Pinatel(1953), introduction du point de vue de la criminologie appliquée, deuxième cours international de criminologie, paris;
- Ranieri. S (1956), manuale di dirittopenale, parte generale;
- Rosal (1953), l'état dangereux en droit pénal Espagnol et Allemand, Deuxième cours international de criminologie;
- **Journal article :**
  - Badawi. A (1931), l'état dangereux, magazine AL Qanounwaliqtisad;

<sup>1</sup>Badawi. A, l'état dangereux, magazine AL Qanounwaliqtisad, 1931, p456.

<sup>2</sup>Ferri, principi di dirittocriminale, torino, 1928, p212.

<sup>1</sup>Dell Andro. R, la recedivanelementariadellanormapenale, 1959 ,p93.

<sup>2</sup>Herzog, Le problème de l'état dangereux en Amérique latine, Deuxième cours international de criminologie, 1953, p502.

<sup>3</sup>Pinatel, introduction du point de vue de la criminologie appliquée, deuxième cours international de criminologie, paris, 1953, p202.

<sup>4</sup>Loudet. O, le diagnostic de l'état dangereux méthodologie, Actes du 11 congrès international de criminologie, paris, 1955, p396.

<sup>5</sup>Garraud. R, Traité théorique et pratique de droit pénal français, 1913, p103.

<sup>1</sup>Rosal, l'état dangereux en droit pénal Espagnol et Allemand, Deuxième cours international de criminologie, 1953, p621.

<sup>2</sup>Badawi. A, l'état dangereux, op. cit, p461.

<sup>3</sup>Ranieri. S, manuale di dirittopenale, parte generale, 1956, p112.

<sup>4</sup>Rosal, l'état dangereux en droit pénal Espagnol et Allemand, op. cit, p622.

<sup>1</sup>Badawi. A, l'état dangereux, op. cit, p468.

<sup>2</sup>Rosal, l'état dangereux en droit pénal Espagnol et Allemand, op. cit, p622.

<sup>3</sup>Garofalo. R, la criminologie, paris, 1892, p81.

<sup>4</sup>Asua. D, la systématisation juridique de l'état dangereux, deuxième cours international de criminologie, paris, 1953, p32.

<sup>1</sup>Badawi. A, l'état dangereux, op. cit, p468.