

The Effectiveness of Precautionary Measures in Reducing Criminal Risk

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Abstract- The study aimed to demonstrate the effectiveness of precautionary measures in reducing crime risk, were the study followed the descriptive method by reviewing the studies and references that dealt with the precautionary measures, and also the analytical method by discussing the effectiveness of these measures in reducing the criminal risk.

The study results showed that the application of personal precautionary measures is minimal, if not lacking, by Arab courts in general, and Iraqi in particular, while there is some of applying for the in-kind measures, contrary to personal measures by the Iraqi courts, particularly the confiscation measure, which is frequently applied, is due to the type of crimes committed. On the other hand, the results also showed that measures as criminal penalties, include restriction and deprivation of liberty or deprivation of certain rights and privileges, meaning that they affect the rights and freedoms of individuals.

The results of the study showed that there is need for Iraqi legislation to focus attention on precautionary measures as a preventive measure for crimes to occur, rather than the application of the punishment, and to begin the rehabilitation of inmates in reform centers and re-training them so that they can be reintegrated into society.

Keywords: Effectiveness, Precautionary Measures, Criminal Risk.

I. Introduction

The fight against the criminal phenomenon is the ultimate goal of all those who are interested in the phenomenon, and the attainment or failure of this goal is a measure of the success of the criminal policy adopted within the society. Criminal policy is a science aimed at investigating the facts of the criminal phenomenon in order to find the best ways to combat it, starting from the basal level related to the criminalization of the criminal base. Societies vary according to their level of social, moral and spiritual development. It also examines the nature of criminal offenses to determine which facts should remain criminal, which should be disclosed, and which offenses should be described. The criminal policy moves to the penal section of the criminal base, in order to assess the prescribed penalties, mitigations, aggravations, exemptions and legislative individualization prescribed in the Penal Code (Ali, 1974).

The criminal policy also has a role in the field of criminal litigation procedures, which was confirmed in the past years and after the scientific revolution, which called for the need to examine the factors driving the criminal behavior and the spacing between the individual and its adaptation to the social milieu to make it anti-social, in order to determine the most appropriate ways to return the individual to the community fold and make it a useful member. The role of criminal policy is evident at this stage by identifying certain special procedures that need to be followed with certain categories of criminals, such as juveniles, psychological criminals, political criminals and criminality. The criminal policy then ends up with its third rank in determining the methods of punitive treatment once the criminal part has been effectively implemented within the penal institutions, especially with regard to the executive singularization of the penalty and criminal measures, and to ensure a scientific method in the implementation of the penalty against the offender in order to ensure rehabilitation, reform, refinement and reintegration into society.

For many years the punishment has been the only weapon in society's hands against crime, but in many places it has failed to achieve the desired goal of combating various criminal phenomena, which has necessitated the search for an alternative to the penalty, which it shall be effective in achieving the various purposes of criminal sanctions. Thus, in view of the diversity of methods to combat crime, the idea of precautionary measures has emerged as a new form of criminal sanction (Aklan, 1983) (Qurani, 1989).

This new type of sanctions in fact raises some questions as to what it is and how it has evolved, as well as its sections and purposes, as well as to demonstrate problems related to the relationship of measures to criminal punishment.

Precautionary measures are generally a set of coercive measures monitored by society in order to counter the inherent criminal risk of the person and which foreshadows the possibility of future crime (Ali &

Osman, 1980). It is clear from this definition that measures are nothing but means intended to protect society against the future danger of the offender, by blocking the way between it and the means that motivate or facilitate the commission of the crime, such as confiscation of arms, closure of the shop, prohibition of residence, etc. Or by preparing the criminal for an honorable life in the community or treating him from a mental or psychological illness that affects his behavior, such as placing the criminal in a work, putting him under police supervision, or placing him in a mental clinic.

The association of measures with criminal hazard means that they are signed by those who have already committed a previous crime that reveals that seriousness. Hence, precautionary measures are distinguished from the preventive measures that society may take before the crime occurs, with the aim of preventing it from occurring at the outset (Wazir, 1987).

II. Problem of the study

It is no longer possible to apply only the punishment in the face of the criminal phenomenon, but there is a need to resort to other preventive measures in order to address the criminal danger that remains inherent in the human soul, which may appear in the form of a criminal pattern from time to time, and therefore the problem of study is determined in demonstrate the effectiveness of precautionary measures in reducing crime risk.

III. Importance of the study

Since the civil societies seek to reduce crime and respond to crime before it occurs, it was necessary to look for an approach other than punishment, which is the use of methods based on rehabilitation and treatment, and their legitimacy is not based on error as much as on the basis of social defense of society against cases of criminal risk, which called the precautionary measures. This is how international conferences began to urge the adoption of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Kyoto, Japan, from 17 to 26 August 1970, and the outcome of this conference and the recommendations that emphasized the need to adopt precautionary measures. Here the importance of the study in determining the nature and effectiveness of precautionary measures to reduce the risk of crime.

IV. Methodology of the study

The study relies on the descriptive method by reviewing the studies and references that dealt with the precautionary measures. The study also relies on the analytical method by discussing the effectiveness of these measures in reducing the criminal risk.

V. Terminology of study

- **Precautionary Measures:** Taken by the judge in addition to the original penalties against those found to be a danger to public safety, to reduce crimes occurrence by persons who show tendency to commit crimes.
- **Criminal Risk:** means the possibility of a person to commit a crime depending on social, psychological, personal or other factors.

VI. The emergence of precautionary measures

Precautionary measures are a set of remedial measures prescribed by law, which the judge forcibly applies to the offender to counter the criminal danger inherent in his person and to prevent it from society (Hosny, 1982).

Thus, measures besides punishment are the second means of criminal policy in the face of criminality, and they represent the strength of the idea of a criminal sanction that cannot be imagined without them. Punishment alone does not guarantee the realization of the basic objective of society to combat the criminal phenomenon. Cases that cannot be inflicted on the offender, as in the case of the insane and the young due to their lack of criminal capacity, and measures are applied beside the punishment to fill the gaps and deficiencies in the penal system for their ineffectiveness in the rehabilitation of some criminals, as in the case of who accustomed to crime and crimes of psychological criminals (Abu Amer, 1992).

These measures, which are due to the positivist school in its rooting and criminalization in a general theory, and the establishment of its rules and the provisions of its provisions, known long ago before the emergence of this school similar systems lacking the intellectual principles and scientific foundations that organize them as in modern measures. Some of the ancient peoples knew that they had the meaning of

defending against a possible future threat, such as mutilating the face of an adulterous woman in ancient Egypt, and cutting off the hand of a doctor who causes the death of his patient in the Code of Hammurabi (Hosni, 1982). The idea of dangerous cases was also known and the perpetrator was considered a perpetrator of a crime, such as homelessness in ancient Egypt, and the misdemeanors of children in the Greeks, who were punishable by death (Ali, 1974).

These preventive measures also made their way into some of the early laws, such as the “Carolina Law” promulgated by Charles V in 1532, which granted the judge the power to put the offender in prison if the circumstances of his crime found a threat to commit another crime as a precautionary measure until he proved his good behavior. And the English Act of 1860, which provided for the admission of criminals with mental disabilities to a mental hospital as a preventive measure of their danger to society (Almarsafawi & Ibrahim, 1970).

The concept of precautionary measures was first crystallized in the Swiss Penal Code (1893), drafted by the criminal scientist (Carl *Stooss*), and proposed reforming the Penal Code by adopting precautionary measures in addition to traditional penalties to avoid failing to prevent recidivism (Sorour, 1964). An the Levasser project on criminals (1959), the 1953 Law on Drug Abuse Measures, the 1954 Law on Special Measures for Alcohol Abuse, and the Italian Penal Code of 1930 set out a precautionary measure under the name of Preventive Measures (Behnam, 1977), adopted by the Egyptian Penal Code (1937), the Jordanian Penal Code (1960) and the Iraqi Penal Code (1969), which – the Iraqi Code - provided for precautionary measures to be subject to all provisions governing punishment, Article 1 of the Iraqi Penal Code stipulates that “Precautionary measures not provided for by law may not be signed”.

Precautionary measures also emerged in the discussions of international conferences. The International Conference on the Penal Code in Brussels (1926) decided that punishment as a single part of the crime was insufficient to meet the practical needs of social defense, especially in the face of minors of varying degrees of acceptance of education. In Rome (1928), there was a report on precautionary measures, in which the jurist (*Enrico Ferri*) participated in the preparation of a report on these measures, as well as the International Congress of Penal Science in Prague (1930), in which the precautionary measures were divided into personal anti-freedom measures and other restrictive personalities, and other conferences (Ali, 1988).

VII. Types of precautionary measures

The precautionary measures as means of defending society are aimed at the criminal risk of certain groups of criminals to prevent them from society, where there are many and varied to confront all types of criminal hazard, perhaps the best division of these measures, which was adopted by most of the criminal legislation, and confirmed by the International Conference on Penal Code and Punishment held in Prague (1930) distinguishes between the negative and restrictive measures of personal rights, anti-rights measures, and in-kind measures. We will address both personal precautionary measures and in-kind precautionary measures.

First: Personal precautionary measures

These measures are divided into two parts: personal precautions measures deprive freedom, and other restricted it, and in each section we will briefly consider the following:

A. Precautions measures deprive freedom

A set of measures that deprive the convicted person of the freedom to treat him / her from the mental, or neurological illness that caused him to commit the crime, spoil his social behavior, or to remove him from the society or the environment in which he lives, or to exclude him from the places where he or she is feared to commit a new crime (Aldori & Idbeah, 1998).

These measures vary according to the variety of cases they face because they do not face a particular type of dangerous criminals, but they face different types and multiple, so they vary to detention in a therapeutic shelter, and therapeutic shelter means every clinic dedicated to mental illness or addiction to alcohol or drugs in order to face the criminal risk inherent in the offender (Al-Sayyed, 1973). The duration of this measure is indefinite because it is subject to the sickness of these sentenced persons, but some criminal legislation limits the duration of the measure to the maximum penalty prescribed by the legislator for the offense committed, with the exception of the patient whose condition constitutes a threat to public safety in the community, and remains subject to the measure pending his recovery of his illness by a decision of the

court that ordered his detention, after the doctor of the therapeutic clinic provides the necessary medical reports that proved his recovery from his illness (Alsaifi, 1970).

B. Precautions measures restricting freedom

These measures are implemented in a free environment, so that the offender is free in origin, but it places some restrictions on this freedom. Freedom to prevent him from going to mufflers or shops that are forbidden by laws and regulations, or appearing in certain places related to his criminal behavior for fear of returning to crime again (Alkhwaji, 1986). Some laws have made it a precautionary measure as in Italian law, while others have made it a consequential punishment as in Egyptian law (Abu Khatwa, 2002). Supporters of the positivist school are the first to advocate such measures and call it "social defense measures" to prevent dangerous criminals from harming society, such as life-imprisonment for offenders, and neutering of sexual offenders (Alsaifi, 1970). Under contemporary punitive policy, this measure has become limited to foreigners, as the state intends to expel a foreigner who resides on its territory if it appears to pose a danger to public safety and does not allow him to return to it at all, or allow him to do so after a certain period of time (Alawaji, 1987).

In addition to the prohibition of residence in a particular place, according to this measure is prohibited from the danger person to reside in a certain region or place to isolate him from environmental conditions or factors feared to facilitate the commission of a new crime, in this measure embodied the adage "prevention is better than cure" (Alalfi, 1945).

Second: Precautionary measures inhibit rights

It is a range of precautionary measures aimed at countering the criminal danger, by denying the right that makes use of it or helps the perpetrator to commit the crime, lest the perpetrator be able to use this right to commit a new crime. The following are details of these three types:

A. Projection of trusteeship

This measure is intended to deprive the sentenced person of certain offenses - if he or she is a guardian - of his or her rights over the person or the property of those under his or her guardianship, this abstraction encompasses all rights, or is limited to some of them, and may be general to include all children under his or her guardianship, and may be limited to some of them (Al-Sayyed, 1973).

The researcher believes that the wisdom in the landing of such a measure is that people who are sentenced for certain crimes are not considered worthy of the duties of guardianship because of the crimes revealed by the corruption and seriousness is not upright with being guardians, in addition to the duty of society towards minors is achieved in keeping them away from corruption and danger, by handing them over to those who meet the conditions of goodness to take care of their affairs and interests in the manner in which their benefit and interest are realized.

B. Prohibition of working

This measure means depriving a person who is punished from practicing a profession, craft or work if his criminal behavior represents a departure from the assets, traditions or duties of the work. For example, a doctor who commits an abortion will be banned from the medical profession, or a merchant who commits fraud will be prohibited from doing business, a driver who has repeatedly committed wrongful murders will be banned from driving, and an employee who has committed bribery will be banned from public job (Abu Amer, 1992).

According to that, the researcher believes that the wisdom behind this measure lies in the protection of society from the criminals who do not have the moral, practical or technical guarantees to practice a particular profession or work, and the protection of these professions from these criminals.

C. Withdraw the driving license

It is a measure that can be taken in the face of those who commit serious violations of the traffic law, because of the misuse of the driver of some of the vehicles facilitated by the use of vehicles in order to stop those who try to break the rules of the traffic law, which regulated how to drive such vehicles, so the responsible authorities in the state enact laws which imposes deterrent penalties for those who attempt to breach these assets, such as withdrawing the driving license as a precautionary measure to prevent the misuse of the vehicle and to preserve the lives and property of the people (Al-Ghareeb, 2000).

The researcher believes that this measure is applicable in the Arab countries in general and in Iraq in particular, due to the characteristic of the streets of Iraq in the case of lack of discipline in driving and lack of full compliance with the traffic law and the resulting risk to road users.

VIII. Characteristics of precautionary measures

Precautionary measures are characterized by several characteristics that must be mentioned and detailed in order to determine the nature of these characteristics, and their relevance to the nature of measures taken in different cases, namely:

First, special prevention as the goal of the measure

The specific function measures are prevention or private prevention, ie attempting to eliminate individual risk factors that may prompt a person to commit a crime in the future. On this basis, the application of measures depends on the fulfillment of two conditions: the first objective is to commit an individual to a crime, and the second is the availability of a dangerous situation that makes the owner of a new crime (Ali & Osman, 1980).

It follows that the measures, even if they take the form of deprivation of liberty, are not intended to inflict pain or atonement for the crime that occurred. Rather, it aims to remove the offender from the circumstances and factors that predispose him to the conduct of the crime, that is, to remove him from the causes of his seriousness. The fact that the measures relate to future criminal seriousness rather than the crime or criminal offense committed should be taken into account in their signature to suit the character and seriousness of the offender without examining the substantive basis of the crime that had occurred.

Second, subject to the principle of legitimacy

Considering that precautionary measures are a form of criminal sanction, they shall be applied only by legislative text. The judge refrains from applying them, and the penal authority refrains from implementing them without a legal text pursuant to this principle, because its signature would prejudice individual freedoms, as it does not find a basis for them in the legislative texts. Farad and its maintenance. The principle of the legitimacy of precautionary measures is the result of the efforts of jurists in the International Federation of Penal Law and the modern social defense movement, led by Mark Ansel, to ensure that the defense of society does not exploit precautionary measures at the expense of individual freedoms, thereby ending some of the claims that were required to sign Measures against those who are criminally dangerous without committing a crime (Hosni, 1982).

Third, precautionary measures are of a coercive nature

This means that their application does not depend on the will and will of the offender, but rather against their will and coercion, for the common good in the face of the criminal phenomenon. It is mandatory, although many of its forms are remedial measures or placement in social welfare institutions (Abu Amer, 1992).

Fourth, the judicial nature of the precautionary measures

This requires that these measures may only be signed by the judicial authority which exclusively invests them if their conditions are met by those who apply them. This results in the absence of any administrative authority to implement them, as judicial intervention in the face of these measures guarantees the freedoms of individuals and safeguards them. In addition, the judiciary has a role that can not be overlooked in estimating the seriousness of the crime and verifying the condition of the previous crime to say that the availability of that seriousness, and some may argue that some kind of measures require technical expertise such as the use of doctors and psychologists and social workers, and this is not available to the judge, but the response M Wall on this claim by saying that the judge to use these experiences and provide him with what he needs technical information, to make a decision on the measure just as is the case Bastaanth the opinion of experts on the issuance of judgment of conviction or innocence on someone (Behnam, 1996).

Fifth, precautionary measures of indefinite duration

Part of the jurisprudence that the failure to limit the duration of the precautionary measure is a threat to individual freedom, because it allows the arbitrariness of the authority based on its implementation, as the determination of a minimum and maximum period in the text of the law to ensure the rights and freedoms of

individuals, especially since there is no legislative terms of specific Therefore, the owners of this trend consider that it is preferable to at least set the upper limit for the duration of the measure, and leave it to the implementing authority to determine the time spent by the measure according to the circumstances of the convicted person (Alsifi, 1970).

Sixth, the possibility of continuous review of precautionary measures

This characteristic is one of the most important characteristics of the precautionary measure, and it is a natural consequence of its association with criminal hazard and is therefore subject to reconsideration with a view to its appropriateness to the evolution of the seriousness of the convicted person, and make the measure in line with the development of the situation because it is very difficult to determine the law or the judge in advance the duration of the measure, and that it is able to eliminate the criminal risk of the convict, which does not settle anyway. Debris taken is not final as it has been shown during its application ineffective in achieving its goal, which requires modification of its content or change by another measure, and this requires examination of the convicted subject to the measure to say the feasibility or ineffectiveness of this measure, as it follows from this characteristic to maintain the relationship between the entity In the light of the results of this follow-up, it is decided to amend its duration or to replace it if the case of the convicted person so requires. In this regard, Italian law stipulates that the precautionary measure should be canceled once the minimum period of time stipulated has expired. on her The law, unless the scientific examination confirms that the criminal danger still exists with the convict, and it is possible to terminate the measure before the maximum (Italian Penal Code, 1930).

IX. Purposes of Precautionary Measures

The purposes of precautionary measures are limited to one primary objective, which is to counter the criminal danger inherent in the person of the offender to eliminate them, and to prevent them from committing future crimes. Crimes through private deterrence, but what distinguishes measures from penalties is that private deterrence: the only objective in the measures, while one of the other objectives in the sanctions, such as public deterrence and justice (Hosni, 1982).

Since the seriousness of the criminal measures that the precautionary measures face is different and the forms are different, the measures vary in their manifestations. Measures may take the form of stripping the offender of the material means that would help him to commit the crime, or take the form of his removal or isolation from society to ward off his danger if rehabilitation does not work with him (Ahdaf, 2002).

Precautionary measures achieve their goal in a variety of ways, the most important of which are rehabilitation, exclusion and incapacity, which are combined by one expression, which is the "Special Deter".

A. Rehabilitation

Rehabilitation means reconciliation between the criminal and the society through the elimination of the sources of criminal risk available to him through a range of therapeutic and disciplinary methods leading to rehabilitation until the behavior of the measure after the expiry of the law. With the community, he is treated if he is sick and polished and evaluated if he is a pervert or his education is a craft that he lives if he is unemployed. Devoid of his criminal seriousness (Tharwat, 2001).

If the measures aim at re-adapting the criminal to the society, the punishment also seeks to achieve this goal, but it does not neglect the considerations of public deterrence and justice. This is logical, because precautionary measures are devoid of moral content, since they are not based on sin, and therefore do not aim to achieve justice. Between contempt measure The crime that was committed has the effect of denying it from the point of view of the public a repulsive factor of criminality, which denies achieving the purpose of public deterrence (Hosni, 1973).

Nevertheless, precautionary measures may accidentally achieve justice, manifested by the unintentional painfulness of such measures. Who is responsible for wholly or partially responsible, and what it requires to confront the reform of the offender through precautionary measures is a requirement of justice that obliged society to assume its responsibilities by taking the offender's hand and re-familiarizing with the society again (Al-Sayyed, 1973).

B. Exclusion

If rehabilitation is one of the means of precautionary measure to eliminate criminal danger, but this does not mean that it is the only means to achieve this purpose, hope may be weakened or difficult to achieve only after a long time and remain dangerous criminal threat to society, then should resort to another way to achieve the goal. This measure takes the form of removing the offender from society and placing him in conditions that prevent him from harming society. This measure is achieved by arresting the usual offender, prohibiting his residence in certain places, or removing him from the country if he is a foreigner. The situation, where I considered a means of defending society from the criminal danger and was the eradication of the criminal factors of the offender treatment or refinement, or the eradication of the offender itself, as these factors could not be eradicated (Abu Amer, 1992).

C. Incapacity

This means to deprive the criminal of the physical means that help him to commit his crime and harm the society, so that without it is unable to achieve his crime, this measure may take the form of machines or tools that can be used by the offender to carry out his crime or confiscate dangerous things in themselves, as well as Closure, confiscation, guarding or revocation of the license to deny the offender from practicing the profession that he can exploit to facilitate the commission of the crime. Such measures may also revoke the driver's license of a driver who is drunk or who has repeatedly violated traffic accidents (Tharwat, 2001).

X. Criminal Risk

Since the positivist school drew attention to the need to take care of the person of the criminal rather than the crime as an abstract idea, the idea of criminal danger has emerged and became a condition for the responsibility of the perpetrator as a basis for punishment instead of moral responsibility that no longer has a place under this school (Abu Amer, 1992).

If the idea of criminal danger originated in the positivist school, and one of its poles, Judge (*Raffaele Garofalo*), declared that the basis and criterion of punishment lies in this seriousness, this does not mean that there are no ideas before which called for the need to protect society from criminality. The importance of distinguishing between those who can be reformed and those who are unable to do so, and called for the importance of directing the punishment towards the future, it is a remedy for those who can be repaired, and eradication for those who do not hope to reform (Sorour, 1964).

Part of the criminal jurisprudence in connection with the definition of criminal seriousness as a psychological condition experienced by the offender and affect his behavior, perhaps the most prominent definition in this context, "Florian Grispigni" as "the capacity of the person to become on the side of the possibility of perpetrator of the crime". During this definition, "Grispigni" used the psychological state of the person, as it links the criminal hazard to the psychological side, and the risk is only a psychological anomaly resulting from the interaction of a group of personal and objective factors, as well as linking the other between the seriousness and the criminal part, which entails the penalty criminal on the person in case of committing an act against the law (Mahdi, 2002).

From the Arab criminal jurisprudence there is who used the psychological state in defining the seriousness of the crime, Dr. Ramses Behnam defines it as "A psychological state that is likely to be the source of a future crime" (Behnam, 1970).

XI. Evaluation the role of precautionary measures in combating the criminal phenomenon

To begin with, an assessment of the role of precautionary measures in reducing crime in society should address this role in both in-kind and personal measures, in order to determine the effectiveness of such measures in reducing crime risk.

A. Evaluation the role of in-kind precautionary measures in combating the criminal phenomenon:

In-kind measures include two types of precautionary measures, confiscation and closure. These two types will be evaluated through the theoretical first and the practical second, as follows:

First: in theory

It should be noted that confiscation and closure as in-kind measures, which are especially applicable to legal persons (corporate) such as companies, often except in some cases where they are applied to natural persons, reduce the criminal phenomenon by confiscating objects that are usually used in various crimes, such as narcotics and alcohol trafficking, and theft, such as seized items such as trucks and ships, are confiscated

for the benefit of the state. Similarly, when a company that manufactures narcotics or alcohol is closed, or when a brothel are closed, it puts an end to such crimes. In theory, in-kind precautionary measures, like personal measures, play a positive role in combating the criminal phenomenon and rid society of the evil of crime (Behnam, 1996).

Second: Realistically

It can be said that in kind, unlike personal measures, are partially applied by the courts in a number of Arab countries, especially the confiscation measure, which is widely applied, due to the type of crimes committed. But what is interesting is this confiscation applied as a precautionary measure or as an additional punishment? The researcher believes that confiscation is applied as a punishment and not as a measure, but the important thing is that confiscation, whether it is a precautionary measure or a penalty, it takes the same meaning and aims at the same goal. As for the closure we note that it is not noticeably applied by the courts, we rarely find that a company has been closed because of committing a crime. As for the comparison of in-kind measures with Iraq and in-kind measures in other countries, we note that there are the same measures in all countries that take both the penalty and the precautionary measures in combating the criminal phenomenon.

B. The role of personal precautionary measures in reducing crime risk:

Assessing the role of personal precautionary measures should be done in both theoretical and real terms:

First: in theory

It is noted that personal precautionary measures play an important role in the fight against the criminal phenomenon, especially when the punishment is revealed as a second way to eliminate crime in society, and thus reduce the risk of criminals for its shortcomings in the fight against this phenomenon.

For example, when an insane person commits an act that is contrary to the provisions of the Criminal Code and is punishable under this law, that person cannot be punished because of his criminal irresponsibility, which is the basis of the punishment, which keeps the person's risk in place. But when there are precautionary measures by placing a person in an institution for the treatment of mental illness, the measure applied in this case, the case of the crazy person, it is different as this measure protects society from the risk of this person and it is forced to treat this crazy person and then help them to Reintegration into society as a normal person is not afraid of people, and then the community will be rid of such a person when the generalization of this precautionary measure. Similarly, for drug addicts, when they apply either the legal status within a treatment institution or the legal status within a specialized institution, it helps them to rid themselves of the evil of addiction and thus eliminate the danger they posed to citizens, thus making them good citizens contributing to the development of their country. Instead of helping to sabotage it. The same applies to other personal precautionary measures, such as exclusion, denial of residence, etc. (Alawaji, 1987).

Precautionary measures are lighter than punishment and in terms of the impact that can be exerted on the offender in the case of the application of either the penalty or precautionary measures, the latter treats the offender with compassion and flexibility, which helps him to integrate into society quickly through his sense of being a good person and important and positive and not negative In society, unlike the punishment that treats him harshly and that he is an undesirable person and that he is a deviant person from society, which makes him when he is released from prison, committing the most heinous crimes of the crimes committed by the former because of the impression that the punishment contributed to his entrenchment in his mind that he is an invalid citizen. Measures Precautionary embodies the principle that "prevention is better than cure" in the field of crime.

Second: Realistically

The application of personal precautionary measures is very small, if not non-existent, by the Kuwaiti courts, as if the precautionary measures do not exist in addition to the penalty in Chapter I of the Criminal Code, which makes the penalty and precautionary measures the criminal penalties applied to the offender in the case of a crime, unlike States Western countries, which give great attention to the precautionary measures in the field of combating the criminal phenomenon because it has realized its value compared to the punishment of these countries mention the United States of America, France and other Western countries. There are also Arab countries from the Middle East that attach great importance to the precautionary measures

in the field of combating the criminal phenomenon, in addition to the punishment of course, including Egypt, Tunisia, and others.

The researcher believes that if the precautionary measures were applied in the required manner and in the way they are applied in Western countries, there would be a noticeable change in the percentage of crimes committed and thus put an end to the escalation of the criminal phenomenon, especially as the private bodies to follow up the prison conditions in a number of Arab countries warned in their annual reports that there are Deterioration in conditions within the various correctional institutions, and the absence of effective respect for the rights of prisoners recognized and guaranteed by law, if the society's view of the prison was changed from being a means of retaliation to being a public institution that re-education and rehabilitation of prisoners and the application of measures In parallel, there would have been a sense of interest on the part of the prisoners, which would make them stop or reduce the crime rather than increase it. Therefore, the legislator requires workers to activate the role of measures by applying them in addition to the punishment in the fight against the criminal phenomenon.

XII. Trends of criminal policy in combating the criminal phenomenon

To begin with, criminal policy can be defined in general as a set of means and measures introduced by the state in a particular period of time to combat crime and maintain security and stability within it. In this regard, there are two concepts of criminal policy, one narrow and the other broad. Criminal policy in the narrow sense is the set of means and measures that the state must use to enforce the crime as effectively as possible (Salem, 1995). This theory remained prevalent during the nineteenth and early twentieth centuries as in the definition given by the jurist (Feurbach), when he considered criminal policy the sum of restraining means by which the state confronts crime, the same direction that the famous jurist (Vonlize) went, when the concept of criminal policy was limited to the organized set of principles that the state and society must adopt to regulate the fight against crime (Ahdaf, 2002).

The broad concept of criminal policy, which is prevalent in modern times, is not limited to confronting crime by enacting criminal legislation and tightening penalties. It is also a sociology in the criminal science group which examines the causes of criminality and the ways to treat it (Jaafar, 1993).

It is clear from the foregoing that the criminal policy concerned with the stage before the commission of the crime, by enacting a comprehensive precautionary policy that would prevent the offense, and this requires the state to adopt a plan for economic, social and cultural development, and improve the standard of living for its citizens and residents, compulsory education would reducing illiteracy, lack of responsibility and awareness among people, and providing adequate housing would also contribute to tackling crime, combating alcohol and drug addiction, and eliminating the role of prostitution, corruption and gambling, which are a major cause of criminality, and attention to children and adolescents to immunize them from delinquency and slide into the underworld, like the mentally disturbed and the risks they pose to society, where they should be ensured and tracked until their full recovery.

In the present era when the world has become a small village by virtue of the communications revolution, one of the important mechanisms of globalization that has enabled it to cross borders despite its social, economic, political and cultural manifestations. They are not only an aggression against the sanctity of their homelands, their particularities, beliefs and economics, but also the dangers they pose to the lives of all human beings. The globalization of crime has become more complicated, boundaries between states are conceived for criminal activity. In the face of recent technological development, a person in Iraq, for example, can contribute to the commission of a serious crime in another country that has no common borders with Iraq, with the contribution of others whose residence and nationality may vary (Idmaj, 2004).

In view of the severity of this situation, countries are required to consider reconsidering their criminal policies in general by finding plans and methods that respond to the development of crime associated with technological progress, finds a new framework for cooperation in this field, especially as traditional approaches to international cooperation have transcended their complexity of procedures and slow implementation.

On the other hand; talking about the institution of reform as a framework for reform and rehabilitation and its connection with the external environment, is in an approach centered on three pillars:

- First: communication to create an atmosphere conducive to reform, rehabilitation and reintegration.
- Second: Communication in order to prepare the inmate psychologically before his release.
- Third: Activating the educational and social role of the correctional institution and its relationship with the external environment and civil society activities.

First: communication to create an atmosphere conducive to reform, rehabilitation and reintegration:

The Department of Prisons and Reintegration has engaged in a serious program according to a systematic and well-planned scheme, focusing primarily on the social aspect of the inmates at various levels, in the context of bridging the differences between the inmate and the employee. And various activities, such as sports, music, theater, painting, library, not to mention the monitoring of literary creations because of the impact on the sense of psychology and refinement of talent, and challenge the problem of introversion and inferiority among the inmates, and thus create a suitable atmosphere to fill the void that may be left in vain, without organizing And without investing in the benefit of the inmate benefit and benefit, and so as not to be a deviation in the practice of harmful activities such as violence against other inmates and reading corrupt and harmful books, and drug use, and reading books containing the destruction of moral values or include criminal stories or sexual images aimed at temptation and arousal desires (Alawaji, 1987).

Second: Communication in order to prepare the inmate psychologically before his release:

The focus on the psychological aspect is of great importance to the inmate before his release in preparation for his integration, through awareness and through the formation and framing and provided him during his arrest from the ground enabling him to make his way in life with balance and stability to regain his place and role within the social fabric, so that it becomes fit for himself For others, the possibility of involving the inmate in playing a role that can be assigned to a specialist in the field of education, is an attempt to prepare the inmate psychologically to sensitize the importance and value of his role, which develops a sense and sense of importance, and high morale (Alawaji, 1987).

Third: Activating the educational and social role of the correctional institution and its relationship with the external environment and civil society activities:

The problem of activating the educational and social role of the correctional institution requires strengthening the bridges of communication with civil society actors, from human rights and educational organizations concerned with reform affairs, with the aim of improving the pace of reform according to joint programs and plans aimed at reducing deviation, providing effective ways on the ground, such as providing work For example, for those who have the qualifications of the released, according to their specialization, by intervening with employers and persuading them to employ graduates of correctional and rehabilitation centers and correctional institutions, on the basis that they have become normal people, which leads to self-redress inmate through his sense of help to Access to a resource for living and a decent income to start a new life, which can be considered a serious precautionary measure to reduce deviation (Al-Makki, 2003).

This support will only be achieved through the creation of a tracking and aftercare unit, which is of paramount importance in tracking the conditions of inmates after their release in order to inspect their conditions and the possibility of their integration, and the problems facing them. Specialized scientific mechanisms and foundations, and their saturation with the principles of reform and human rights, so that the correctional institution to complete its reform role as a major actor in the educational field among other social institutions, with a focus on emptying the community mentality from the traditional perspective of the role of drug By creating "open doors", study or cultural days and direct exhibitions for visitors, showcasing the latest guest products in various fields, organizing seminars and educational meetings with a focus on Restraining punishment is in itself nothing but a measure of deprivation of liberty and is not intended to hurt and degrade the dignity and humanity of the inmate, insofar as it aims to re-educate, train and indoctrinate the general principles of education and prepare him until after his release by enabling him to pursue a profession or knowledge. Its place in society again. In this context, it is urgent to liaise with the government authorities in charge of religious affairs to send experienced religious preachers for the purpose of contributing to the teaching of religious lessons, preaching and guidance, as well as contacting the departments of professional institutions in order to intensify the establishment of accessories for vocational rehabilitation centers within the correctional institutions with the latest equipment As well as the preparation of training courses and re-update the experience and training of the frameworks overseeing the professional rehabilitation to keep abreast of developments in the preparation of programs and tools used at the technological level.

Moreover; in the cultural field, intensifying contact with the role of associations and cultural forums to contribute to theatrical performances of a social nature and holding symposiums to raise awareness and joint exhibitions to support the creations in which the inmates are fluent, to create a spirit of solidarity and contribute to raising the morale and psychology of inmates for their reintegration. Although it is a center for the implementation of the punishment, it cannot deviate from its essential role as a space for education and an area of reform, which calls for concerted efforts with the various civil society actors concerned with the

educational field and reform matters, with which it should be taken care of. Visor and other educational fields, so that we can monitor and identify the reasons for the deviation with the necessary treatments as a precautionary measure, according to a joint scheme based on scientific principles and principles of the human rights program for the welfare and benefit of the public affair.

XIII. Criminal policy and precautionary measures:

Criminal policy is based on two types of measures to address criminal risk: preventive measures and defense or security measures:

First: Preventive measures or punitive alternatives

This type of punitive measure or alternative, as Enrico Ferry calls it, is intended to address all social conditions that may lead to a crime. For example, combating sugar, addiction and unemployment through education, education, care for children and young people, opening new job opportunities, etc. "The dark road at night is the scene of many crimes and to face it, it is enough to light the road at night," says Ferry. The eradication of crime at its roots by eliminating its causes is better than combating its effects. Such measures are usually used before the criminal offense occurs, particularly to counter individual cases of seriousness that may reveal a tendency towards crime, for example, those applied in situations of displacement and suspicion to prevent future crime (Abu Khatwa, 2002).

Second: Defense or security measures

They are the subsequent measures of a criminal event and are aimed at placing the offender in circumstances that cannot harm the surrounding society. Therefore, it varies from criminal to criminal, which requires the study of the criminal comprehensive study in terms of physical, psychological and social. Some criminals may only succeed in eradicating measures such as death or life-long isolation. In others, remedial measures such as placement in a psychiatric or mental clinic may work, or social measures such as the prohibition of residence in a particular place or the banning of a profession (Ali & Osman, 1980).

XIV. Criminal Policy Assessment:

It is undeniable that positive criminal policy was a revolution in criminal thought in general. The positivist school is credited with establishing two auxiliary forensic sciences, criminology and punishment, and paying attention to the person of the criminal as the nerve of the control process after the whole approach was focused on the same criminal incident. The school is also credited with demonstrating the idea of criminal hazard and making it a responsibility and punishment, and adopting the method of preventive and social defense measures as a means to reduce criminal risk.

The school's ideology influenced the call for new criminal systems, such as amnesty, suspension, conditional release, deportation, postponement of sentence and probation. These regulations have been adopted by many legislations, including the Italian Penal Code of 1930, the Polish of 1932 and the Swiss of 1937. The Egyptian legislator was also influenced in 1908 by the promulgation of the Juvenile Homeless Act. The Egyptian legislator has also adopted the current Penal Code of 1937 when it took some precautionary measures (such as confiscation, closure of the facility, etc.). The measure also adopted the 1967 Penal Code when it distinguished between criminal measures applied to an offender after a criminal offense was established and social defense measures aimed at countering abstract criminal seriousness before the criminal act, such as homelessness and suspicion.

However, this intellectual revolution has not been free from criticism, and this criticism was directed mainly at the idea of social responsibility of the proponents of this school and based on forcing (the principle of forcing or inevitability), and its punitive policy has remained - to a large extent - immune from serious criticism. Among the criticisms of this school were:

- Recognizing that a person can be subjected to some precautionary measures before the crime can be considered a flagrant attack on individual liberty and an infringement of the principle of criminal legality, which requires that proscribed acts be warned before punishment is actually imposed (Abu Khatwa, 2002).
- To say the principle of the inevitability and algebraic of human behavior - including criminal behavior - is not based on scientific evidence, but is purely an assumption. It is known that the school does not rely on the method of abstract assumptions but on the method of scientific experimentation and observation.

- Even if we acknowledge absolute capacity or the principle of algebraic, it would be incompatible with the criminal structure of any contemporary society, or what some would call incompatibility with the principle of "criminal law" (Alawaji, 1987). The dangerous situation, or the criminal hazard that this school says, can only be detected by the crime itself. Even if we say that the disclosure of such a situation can be reached before the crime occurs through the circumstances in which the person lives, for example, which may indicate the possibility of committing a crime in the future, it is absurd that a person is subjected to any measure on the basis of this physical appearance that they live without consideration The psychological aspects of his intent or neglect, which are based only on the freedom of choice denied by the positive school.

We can only confirm what was said that "if any positive legislation were to deliberately establish responsibility on the basis of recognizing the validity of the judiciary and destiny and the absence of choice in the absolute sense, there would be no step forward, but many steps backward, and to vague regimes far from To satisfy the needs of civilized groups" (Alawaji, 1987). Freedom of choice must remain the basis of criminal responsibility, which the school does not satisfy.

What confirms that freedom of choice must remain a fundamental human pillar, and must be the foundations of criminal responsibility, that all legislation and positive projects that tried to replace legal responsibility and social responsibility of moral responsibility has not succeeded. One such project, Ferri in 1921, took legal responsibility by stating that "the perpetrators and partners are legally responsible for the crime unless there is a reason for the act." However, he acknowledged the moral contribution to crime and coercion and that precautionary measures of a punitive nature were not taken against the insane and the weak minds that could not control their actions. This means recognizing the idea of freedom of choice and will despite the desire to deny it.

Also, the Soviet Penal Code of January 1, 1937, which established the principle of legal liability and then contradicted Article 11, stipulated that responsible persons acted with cognition and appreciated the results of their conduct and wished for such results. This means recognizing the principle of freedom of choice and moral responsibility (Alalfi, 1945)¹. The disadvantage of this school is its disregard for considerations of public deterrence and justice from the scope of criminal penalties.

Finally, there is no scientific evidence on what this school adopted in the classification of criminals on the basis of organic and psychological, there are those who have those qualities and never committed a crime, while the most heinous crimes did not have those qualities, this classification is not suitable for adoption to determine punitive treatment.

XV. Discussion

It is clear from the study's findings that the criminal legislation is based on duplication of punishment through reliance on the punishment in the first instance, and then the precautionary measures in the second degree. It was reviewed in the study, which identifies human actions as crimes due to social disturbance and requires the perpetrators to be punished with penalties and precautionary measures.

Thus, precautionary measures, in addition to the penalty, are considered to be the penalty for combating the criminal danger inherent in criminals. However, in many cases, it is clear that the judiciary focuses primarily on the punishment to the extent that precautionary measures are almost non-applicable, except for some they are applied by various state courts such as confiscation and closure measures, and some juvenile measures, and this is unparalleled in comparative legislation that focuses primarily on precautionary measures in the fight against crime such as United States, French and Tunisian legislation, and some other legislation.

This is evidenced by the reports and studies of prisons, which pointed to several problems faced by correctional institutions such as overcrowding, poor health coverage and other problems, as a result of excessive application of the penalty at the expense of precautionary measures, and if the punishment has

¹ The same is underlined by the Cuban Penal Code drafted by a committee headed by jurist Fernando Ortez, who was a professor at the University of Havana, who recognized legal and social responsibility based on criminal gravity on the basis of the principle of reparation and human determinism. However, this project could not be implemented, and another draft was adopted that recognizes the principle of freedom of choice. The legislator returned to the adoption of the Cuban Penal Code in 1936, recognizing legal responsibility.

revealed its inadequacy in protecting society from delinquency and the elimination of crime, the best way is to apply precautionary measures in a serious way as an alternative to punishment in the field of reducing crime.

XV. Conclusion

Based on the above review in this study, it is possible to formulate conclusions as follows:

1. The application of personal precautionary measures is minimal, if not lacking, by Arab courts in general, and Iraqi in particular.
2. The number of precautionary measures stipulated in the Iraqi Penal Code is scarce compared to a number of other countries. There are countries where the number of personal precautionary measures reaches 40 precautionary measures, while the precautionary measures in the Iraqi legislation are only mentioned in articles (1, 5, 103, 105, 111, 118) of the Iraqi Penal Code.
3. There is some of applying for the in-kind measures, contrary to personal measures by the Iraqi courts, particularly the confiscation measure, which is frequently applied, is due to the type of crimes committed.
4. The inmate is being cared for in rehabilitation centers in Iraq with the aim of properly rehabilitating them to reintegrate into society, in return, however, the State could have regulated the use of preventive crime prevention measures in the first place to curb the spread of crime rather than allocating rehabilitation programs in prisons.
5. Measures as criminal penalties, whatever their simplicity, include restriction and deprivation of liberty or deprivation of certain rights and privileges, meaning that they affect the rights and freedoms of individuals, here, it was necessary to entrust its implemented to the judiciary alone in this matter, and not shared by another authority, like the penalties.

XVII. Recommendations

Based on the findings of this study and the conclusions drawn, the study recommends the following:

1. The need for Iraqi legislation to focus attention on precautionary measures as a preventive measure for crimes to occur, rather than the application of the punishment, and to begin the rehabilitation of inmates in reform centers and re-training them so that they can be reintegrated into society.
2. The importance of the legislator not to launch the signing of the measures just because there are signs that do not amount to crime, this is taken to people suspicion and a call for arbitrariness and tyranny by the public authorities.
3. The importance of the legislator taking into account the separation of criminal hazard as a basis for the signing of criminal measures and social risk that can be taken as a basis for the signing of preventive measures that are not prejudicial to freedom or individual rights without even committing certain crimes. In other words, it is possible to say that criminal hazard involves social risk, whereas social risk does not necessarily mean the availability of criminal risk, and therefore cannot be taken as a basis for a criminal sanction, as a penalty or a measure.
4. Not to combine punishment and measure in a unified legal system, this would be equal in terms of the nature of the sanction between persons for whom the elements of criminal responsibility are available and those for whom there are contraindications to liability, such as insanity or disability in the mind or young age.
5. Taking into account that the effects of precautionary measures should be limited to eliminating the phenomenon of recidivism, the protection of society and treat the offender by imposing the appropriate measure of the offender in terms of being sick, or facing the seriousness of crime, or providing a favorable climate for the return of the convicted as a beneficial member of society.

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