

Criminal fines as a punishment and related issues

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عقوبة الغرامة الجنائية والإشكاليات ذات الصلة

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الملخص

تعد الغرامة من أقدم العقوبات التي عرفت البشرية، حيث تمتد حدودها إلى نظام الدييات التي عرفتة الشرائع القديمة وهو نظام التعويض العقابي، إلا أنها تجردت في العصر الحديث من كل معاني التعويض لتصبح جزاء جنائي صرف يحمل معنى الإيلاء متمثلاً في الذمة المالية للمحكوم عليه، لذلك سوف نبين من خلال ما سيتم استعراضه لاحقاً ماهية الغرامة وطبيعتها الجنائية ووظيفتها العقابية، والتنظيم القانوني لها المتمثل في آلية تنفيذها والمرونة العقابية.

الكلمات المفتاحية: العقوبة، الغرامة الجنائية، إلزامية دفعها، التعزيز المالي، الوظيفة العقابية.

Abstract:

The fine is one of the oldest forms of punishment known to humankind, dating back to the systems of compensation for injuries and offenses in ancient legal systems, which were essentially forms of punitive compensation. However, in modern times, the fine has lost all connotations of compensation and has become purely a criminal sanction, intended to inflict pain on the offender through financial means. Therefore, this study will examine the nature of the fine, its criminal character and punitive function, as well as its legal framework, including its enforcement mechanisms and the flexibility allowed in its application.

Keywords: Punishment, criminal fine, mandatory payment, financial sanction, punitive function.

Introduction

It is well known that the phenomenon of crime has existed since ancient times. Initially, the purpose of punishment was simply to inflict pain on the perpetrator. However, with the evolution of the concept of punishment, from retribution to rehabilitation and reform, punishment now serves several functions. For example, financial penalties serve as a general deterrent, warning everyone against committing crimes. Rehabilitation and reform, on the other hand, aim to prevent recidivism. Furthermore, punishment aims to achieve justice, based on the principle of "an eye for an eye," particularly in crimes involving property.

Thus, the concept of punishment evolved, influenced by the philosophical ideas developed by various legal schools, which in turn influenced contemporary criminal policy in all legal systems. This led to the emergence of alternative punishments to address the shortcomings of short-term imprisonment and to avoid the negative consequences of depriving individuals of their freedom. One such alternative is the fine, which is the subject of our study. Among the

legal systems that adopted this punishment is the Swedish law of 1948, which allowed the prosecution to impose fines for certain crimes, such as theft. Similarly, German law, under Article 14/1 of 1969, prioritized fines over short-term imprisonment. French law, which pioneered criminal justice reform, also embraced numerous alternatives to imprisonment, most notably the Criminal Justice Reform Law No. 75-624 of July 11, 1975, which specifically addressed alternative punishments to imprisonment and sought to address the shortcomings of fines. Egyptian and Libyan law also adopted this approach to address less serious crimes, particularly traffic offenses and economic crimes, a point we will discuss further.

Given the importance of this type of penalty, as a financial sanction intended to generate revenue, it is imposed as punishment for those who violate the law. It targets the offender's property, not their person, and does not infringe upon their freedom, physical integrity, honour, or social standing. For this penalty to be applicable, it must be explicitly authorized by the legislature in its penal laws. Furthermore, the judiciary must have full knowledge of the offender's personal circumstances, including their health, social status, and financial situation, and should be granted some flexibility in applying this penalty to ensure its effectiveness in achieving its intended objectives.

This research also aims to enhance our understanding of this issue, clarify the punitive function of imposing such penalties, and assess their contribution to restoring balance within society.

The research problem revolves around several key questions: To what extent is a fine an effective deterrent to crime? Is it a fair punishment that adequately compensates victims? What is the legal nature of a combined fine (including both criminal and civil components)? Furthermore, does the flexibility granted to judges in imposing fines achieve the intended purpose of this type of criminal penalty?

In this study, we adopted a descriptive and analytical approach, meaning we described the penalty of a fine, explained its implementation mechanism and the problems associated with it, and analysed it based on the provisions of the Libyan and Egyptian Penal and Criminal Procedure Codes, ultimately arriving at suggestions that contribute to finding solutions to some of these problems. This led me to structure the research into two main sections as follows:

-Introduction:

-Section 1: The nature and punitive function of criminal fines.

-Section 2: The legal framework for criminal fines.

-Conclusion.

Section 1: The Nature of Criminal Fines and Their Role in Punishment

Contemporary criminal justice policy has increasingly resorted to fines as an alternative to imprisonment, although this trend should not be considered absolute, as fines have proven to be a successful alternative for dealing with first-time offenders. This has given fines a significant place within the system of criminal sanctions. Therefore, in the following sections, we will clarify what this type of punishment entails, its legal nature, and its intended purpose.

Subsection One: The Concept and Legal Nature of Fines:

First: Its legal concept: The penalty of a fine is not a recent invention; it is one of the oldest forms of punishment, originating from the system of blood money (diya) practiced in earlier legal systems, which had a mixed nature. It later evolved into an independent criminal penalty, separate from the compensation awarded by the judge to the victim or those harmed by the crime. Unlike compensation, the fine is paid to the state treasury¹, It represents a source of revenue for both developing and developed countries, and it is fundamentally different from bail, which is a sum of money paid to guarantee the defendant's appearance in court or to ensure compliance with a court order. Therefore, bail is a security measure that can be affected by settlement agreements, unlike a fine, and it is refundable if its purpose is fulfilled.²

A fine, as a criminal penalty, is considered a financial sanction, among those established by Libyan law for misdemeanours and minor offenses, and as a supplementary penalty for felonies. In both cases, it is subject to the principle of legality in criminal law and to the rules governing the execution of penalties, such as pardon and statute of limitations. The amount of the fine may vary depending on the number of defendants, and its execution may be suspended. A fine cannot be imposed on an innocent person, and the higher fine applies when multiple fines are imposed for the same offense. Article 26 of the Libyan Penal Code clarifies that the punitive element of a fine lies in the obligation imposed on the convicted person to pay a sum of money, determined by the court, which cannot be less than ten dinars, to the state treasury. This establishes a debtor-creditor relationship between the convicted person (the debtor) and the state³ (the c Similarly, Article 22 of the Criminal Procedure Code states that the convicted person must pay a sum of money to the state, or that this sum must be allocated for the purpose specified by law, as determined by the court ruling. Editor).⁴

Therefore, our legislature adopted this penalty as an alternative to short-term imprisonment, for several reasons, the most important of which is to avoid subjecting the offender to the negative consequences of incarceration, and to focus instead on the benefits of a fine, such as deterrence and rehabilitation. This penalty can be used either alone or in combination with imprisonment, depending on the circumstances.

Secondly: The criminal nature of a fine: The nature of a fine lies in the fact that it is a criminal penalty in the strict sense, and it is subject to legal principles such as legality, judicial authority, and the principle of personal responsibility. This gives rise to a set of consequences associated with criminal penalties, such as suspension of execution, pardon, recidivism, and others. This

¹ - Mohamed Zaki Abu Amer, Sulaiman Abdel Moneim, General Principles of Criminal Law, Al-Jami'a Al-Jadeeda Publishing House, First Edition, Alexandria, 2002, p. 595.

² - The Libyan Bar Association can be contacted via email at: <https://lawsociety.ly>.

³ - The Egyptian Penal Code.

⁴ - Generally, the proceeds from fines go to the state treasury and become part of its general revenue. However, in some cases, the nature of the crime for which the fine was imposed is taken into account when allocating the funds, and the money is spent for a specific purpose. For example, according to Article 184 of the Egyptian Social Insurance Law No. 79 of 1975, the disbursement of fines is determined by a decision of the Minister of Social Insurance. See: Ahmed Awad Bilal, The General Theory of Criminal Punishment, Dar al-Nahda al-Arabia, Second Edition, 1996, p. 391.

is unlike other sanctions; for example, the purpose of civil compensation is to redress the harm suffered by the victim.

Compensation can be based on social equity, meaning it can be paid by someone other than the one who caused the harm. In contrast, a fine can only be imposed on the person responsible for the crime, and cannot be pursued against their heirs if they die before the criminal proceedings are concluded. Therefore, is joint and several liability for fines permissible? If the answer is yes, then the purpose of the fine would be undermined, and there would be no reason to prohibit imposing both a fine and compensation on the same person.⁵

As for a proportional fine, it may be collected in full from one of the defendants if there are multiple defendants convicted of the same crime.⁶

Similarly, the penalty of a criminal fine differs from a disciplinary fine. The latter is imposed by an administrative body as punishment for a disciplinary offense committed by an individual belonging to a specific organization. There is also a type of fine that is of a mixed nature, referred to as a financial penalty. On one hand, it serves as an extension of the punitive effect of the primary penalty prescribed by law, and on the other hand, it serves as compensation for damages to the public treasury. This is illustrated in Article 180 of Law No. 6 of 1973 concerning civil aviation, which states that any investor, carrier, or their agent operating without a license shall be fined an amount not exceeding ten thousand Libyan dinars. In addition, the Civil Aviation Authority is entitled to compensation equal to double the transport fee for violations of the provisions of bilateral agreements or violations of license terms related to commercial air transport. Here, the fine and compensation are combined, as if the concept is based on the merging of civil and criminal actions, since the interpretation of procedural laws must be based on substantive laws; in other words, the procedural law complements the penal law for its application.⁷

Similarly, Article 43 of Egyptian Law No. 11 of 1991 concerning the general sales tax stipulates that individuals and companies found guilty of committing or attempting to commit such an offense shall be subject to imprisonment for a period of not less than six months, a fine of not less than one thousand Egyptian pounds, or both, in addition to jointly and severally liable for the additional tax and damages not exceeding fifty thousand Egyptian pounds. In case of recidivism, the penalty and damages are doubled.

Therefore, this type of fine has sparked controversy due to its complex nature, specifically regarding whether it should be considered a criminal penalty, civil compensation, or a specific type of administrative fine.

⁵ - Lecture on General Criminal Law at Al-Zaytouna University, Faculty of Law, Tarhuna, delivered by Dr. Al-Hadi Abu Humra, unpublished, 2010-2011.

⁶ - Mustafa Misbah Dabara, "The Penalty of a Fine and Its Applicability in Cases of Attempted Felonies," *Journal of Legal Studies*, June 15, p. 219, available online at <https://doi.org/10.37376/jols.v15i.2119>; See also Rima Misbah Al-Faytouri Al-Farjani, "Criminal Prosecution of the Crime of Abuse of Power in Libyan Law," *Al-Haqq Journal*, Faculty of Law, Bani Walid University, Issue 13, Special Issue of the First International Conference of the Faculty of Law, June 2024, p. 82.

⁷ - See previous reference.

It is clear that the compensation mentioned above constitutes a penalty with a compensatory element; therefore, it can only be imposed by a criminal court. Its imposition is mandatory, regardless of whether the state treasury requests it or whether actual damage to the treasury has occurred. Furthermore, suspending its execution is not permissible, as such a suspension is incompatible with the nature of this type of mixed penalty. In addition to being a supplementary penalty, whether mandatory or discretionary, it can also serve as a deterrent penalty if the conditions for suspending its execution are violated.

Section Two: The Punitive Function of Fines:

Previously, the punitive value of fines was considered very limited, as penalties involving deprivation of liberty were seen as more effective in criminal policy. However, doubts about the effectiveness of such penalties soon emerged, and consequently, the punitive value of fines has risen again in importance.

The reason for retaining this punishment as part of the criminal sanctions lies in its deterrent effect, both specific and general, regardless of how often it is applied for misdemeanors, especially when the motive is greed, such as in crimes like fraud, breach of trust, and embezzlement of public funds that is, the illegal acquisition of money. In such cases, the punishment should be commensurate with the nature of the crime.

Its purpose lies in upholding human rights and dignity, unlike prison sentences which often involve abuses, not to mention the negative effects of mixing inmates together. Furthermore, implementing this type of punishment does not require significant time or resources; in fact, it can even generate financial benefits for the state, whether through compensation for the victim or by using the funds for other purposes stipulated by law. Additionally, any errors in imposing this punishment can be rectified, unlike other types of penalties.⁸

Judicial discretion plays a significant role in determining the punitive value of a fine, given its flexibility and the possibility of adjusting its amount. This allows the judge to balance the amount of the fine with the seriousness of the offense committed by the offender or the harm caused by their crime.

On the other hand, this punishment is criticized for violating the defendant's right to privacy regarding their financial information, which is considered a fundamental personal right. This raises questions about its constitutional legitimacy. Furthermore, this penalty appears to violate the principle of equality before the law, and is considered unfair, as its application varies according to the individual circumstances of the convicted person rather than based on the nature of the offense itself⁹. Therefore, the imposition of this penalty and the extent of the resulting financial burden varies depending on the convicted person's income, although some

⁸ - Ghayth Jumaa Saeed, "Modern Trends in Alternative Penalties as an Alternative to Short-Term Imprisonment: A Comparative Study," Al-Fikr Al-Jamii Publishing House, First Edition, Alexandria, 2020, p. 299.

⁹ - Sabah Sami Dawood, Sabreen Ibrahim Rida, "The Alternative Penalty of a Fine to Imprisonment," Baghdad University Law College Journal, Special Issue on Faculty and Postgraduate Student Research, Part 2, Vol. 36, September 2021, p. 323.

laws require the judge to ensure that the penalty is proportionate to the convicted person's income.

Furthermore, the punitive function of fines, including their intended effect of inflicting pain, cannot be effectively applied to all crimes, especially serious offenses. Its application is usually limited to minor financial crimes. Moreover, fines are unsuitable because they lack any rehabilitative or educational value, and they fail to deter those who are financially insolvent or those who can easily afford to pay without suffering any real hardship. Therefore, they are not appropriate for all types of criminals. Since fines are levied from the convicted person's assets, they inevitably cause demonstrable harm to the income of their family or to their creditors, thus violating the principle of individualized punishment.¹⁰

Based on the foregoing, and despite the criticism it has received, penal legislation seeks to mitigate its shortcomings, particularly given the increasing problems associated with imprisonment. This makes it a more just and fair system that respects the principle of individualized punishment. Furthermore, the judge has broad discretion and can replace a monetary fine with compulsory community service if the convicted person is unable to pay the fine¹¹, Furthermore, its advantages outweigh its disadvantages, and it fulfills the purpose for which it was designed.

Section Two: The Legal Framework for Imposing Fines

The legislator has established the procedures for imposing fines and the methods available for their enforcement, as well as outlining a flexible legal framework for this penalty. These aspects will be discussed in the following subsections.

Section One: The Mechanism for Implementing a Fine as Punishment

The legislator has established a specific mechanism for enforcing a court order imposing a fine, and for whom this order is applicable. Therefore, we will outline the possible methods of enforcement and any potential problems that may arise, as follows.

First: The Optional Enforcement Procedure:

It is well established that criminal judgments imposing a fine create a debt obligation between the state and the convicted person, who is obligated to pay it (Article 424 of the Code of Criminal Procedure). Such judgments are enforceable even if appealed, which is an exception to the general rule for enforcing criminal judgments, which typically require finality. This exception is justified by the nature of the fine; if the appeal court overturns the judgment, the fine can easily be refunded to the convicted person¹², As for appeal court judgments in absentia (under the Penal Code) that impose a fine as punishment, these may be enforced if the defendant does not object within the prescribed time period (Article 428 of the Code of

¹⁰ - Ahmed Awad Bilal, *The General Theory of Criminal Punishment*, p. 399.

¹¹ - Ghayth Jumaa Saeed, "Modern Trends in Alternative Penalties as an Alternative to Short-Term Imprisonment: A Comparative Study," *op. cit.*, p. 299.

¹² - Ahmed Awad Bilal, *The General Theory of Criminal Punishment*, *op. cit.*, p. 408.

Criminal Procedure). In Egyptian law, the rule stipulated in Article 467 of the Code of Criminal Procedure applies: such judgments may not be enforced until the period for filing an objection has expired without any objection being made.

On the other hand, what is the balance between enforcing a fine against a deceased convicted person and the principles of personal criminal liability and the principle that punishment is personal? The general rule is that assets belonging to those civilly liable for the convicted person cannot be seized, and the obligation to enforce the punishment ceases upon the death of the convicted person. However, given the nature of a fine, which is imposed on the convicted person's property and not their person, the legislator departed from this general rule, stipulating that this punishment remains enforceable against the heirs, but only up to the value of the estate. This is clarified in Article 463 of the Lebanese Penal Code, and the same principle is stated in Article 535 of the Lebanese Code of Criminal Procedure.

In reality, heirs are only obligated to pay their deceased relative's debts to the extent of the inherited assets; they are not permitted to use their own personal assets to pay off any remaining debts¹³. This is because they are not criminally liable for the crime committed by their deceased relative, and therefore, physical coercion cannot be used against them during the enforcement process.¹⁴

The legislator also introduced a degree of flexibility in the enforcement of fines, particularly for those whose financial circumstances prevent them from paying the full amount. This is clarified in Article 461 of the Lebanese Code of Criminal Procedure. Accordingly, the judge of the court of first instance is authorized, in exceptional circumstances and upon the defendant's request, and after obtaining the opinion of the Public Prosecutor, to grant the defendant an extension of up to nine months to pay the amount due to the state, or to allow payment in installments. If the defendant defaults on any installment, the remaining installments become immediately due. The Egyptian legislator has also confirmed this principle in Article 510 of the Egyptian Code of Criminal Procedure.

Secondly: Compulsory enforcement:

If the convicted person fails to pay the fine as mentioned above, it will then be enforced compulsorily. The usual method for compulsory enforcement is to follow the procedures for collecting government dues as outlined in the civil and administrative procedural laws. This is further clarified in Article 457 of the Lebanese Code of Criminal Procedure and Article 506 of the Lebanese Code of Civil Procedure.

Another method for enforcing payment of a fine is through criminal proceedings, specifically by imposing imprisonment. This means that if the convicted person fails to pay the fine, it can be collected by detaining them for a period of one day for every five dinars or less (Article 646 of the Jordanian Penal Code). The Egyptian legislator followed a similar approach, stipulating

¹³ - Ahmed Awad Bilal, General Theory of Criminal Punishment, p. 409

¹⁴ - Muhammad Ramadan Bara, Commentary on the General Penal Code, op. cit., p. 64.

a one-day imprisonment period for every one hundred piasters or less (Article 511 of the Egyptian Penal Code).

The simple imprisonment that the legislator has chosen is not a punishment in itself, but rather a means of exerting pressure on the convicted person to pay the fine. The individual then has two options: endure the hardship of paying the fine, or face the hardship of imprisonment. By choosing to pay, the burden is lessened; otherwise, the individual will suffer the consequences of imprisonment. In either case, society has obtained its due from the offender.

However, the use of physical coercion has been subject to considerable criticism. Imprisoning a convicted person to force them to pay a fine is seen as fundamentally contradicting the purpose of this type of punishment, especially when it is used as an alternative to short-term imprisonment. Equating a fine with imprisonment is unacceptable. Therefore, to avoid this problem, the Libyan and Egyptian legislators attempted to address the issue by allowing the convicted person, upon their request, to substitute the fine with unpaid manual or industrial labour. If the person refuses to perform this labour, they are then sent to prison to enforce the original punishment.¹⁵

As a consequence of a crime for which a criminal conviction has been issued, physical detention may be imposed to collect any amounts owed to the state, including fines, costs, and compensation. The duration of this detention depends on the nature of the offense and the number of judgments. For a single judgment, the detention period is seven days for fines and the same for costs and compensation in minor offenses, and three months for fines and the same for costs and compensation in misdemeanors and felonies. If there are multiple judgments, all relating to minor offenses, misdemeanors, or felonies, the detention period is based on the total amount owed, but may not exceed double the maximum period allowed for the most serious offense, which is six months for fines and the same for costs and compensation in misdemeanors and felonies, and twenty-one days for minor offenses (Article 467 of the Code of Criminal Procedure and Article 514 of the Code of Criminal Procedure).

Furthermore, the period of detention for non-payment of fines, costs, and compensation should not exceed six months, even if the offenses are of different types. Additionally, the period of detention for collecting civil damages should not exceed three months (Article 472 of the Lebanese Code of Criminal Procedure, Article 519 of the Lebanese Code of Civil Procedure). Accordingly, physical detention is carried out based on an order issued by the Public Prosecutor, using a form prescribed by the Registrar of the Court, after the convicted person has been informed of the amount of the financial penalty imposed. This procedure is subject to the condition that the convicted person has already served any other custodial sentence imposed (Article 469 of the Lebanese Code of Criminal Procedure and Article 514 of the Lebanese Code of Civil Procedure).

¹⁵ - Ghayth Jumaa Saeed, "Modern Trends in Alternative Penalties as an Alternative to Short-Term Imprisonment: A Comparative Study," *op. cit.*, p. 289; See also Rima Misbah Al-Faytouri, "Suspension of Sentence as an Alternative to Deprivation of Liberty in Libyan Criminal Law," *Al-Haq Journal of Sharia and Legal Sciences*, Faculty of Law, Bani Walid University, Issue 14, December 2024, pp. 231-232.

If the defendant refuses to comply with a court order to pay compensation to a private party, after being formally notified to do so and being financially able to comply, the misdemeanour court in the jurisdiction where the defendant resides may order his detention for a period not exceeding three months. No deduction from the compensation amount is permitted for this detention. The proceedings for such detention shall be conducted according to the usual procedures (Article 472 of the Code of Criminal Procedure and Article 519 of the Code of Civil Procedure).

we have a question about how the length of physical detention is affected by the amount of time a person has already spent in pre-trial detention.

If we consider physical coercion and pre-trial detention to be equivalent, then the period of physical coercion must be deducted from the period of pre-trial detention. However, if we consider them to be different, then the physical coercion may be carried out without deducting its duration from the pre-trial detention period. Legal scholars have adopted the former view, arguing that a fine is a less severe punishment than imprisonment, and that the convicted person should be treated more favorably than someone sentenced to a custodial sentence, from which the full period of pre-trial detention is deducted. Furthermore, if the period of pre-trial detention exceeds the maximum allowed for physical coercion, the fine cannot be imposed; instead, a deduction of 100 qirsh is made for each additional day of pre-trial detention, and any remaining amount is collected through non-criminal means. If, however, the period of imprisonment is less than the maximum allowed for physical coercion, then the latter is carried out according to the total maximum period, without exceeding it¹⁶. However, some argue that the nature of pre-trial detention is completely different from physical coercion, and therefore there is no basis for equating the two.¹⁷

Section Two: The Flexible Legal Framework for Monetary Fines:

Most criminal justice systems have sought alternatives to imprisonment for offenses carrying sentences of less than one year, particularly given the limited effectiveness of custodial punishments. Indeed, the principle of individualized sentencing necessitates such an option, allowing the judge to impose a fine as an appropriate punishment, tailored to the offender's circumstances and the objectives of the sentencing process. Therefore, we must first explain what is meant by defining penalties within a flexible legal framework, and then discuss the degree of flexibility afforded to the judge in imposing such penalties.

First: Determining the punishment within a flexible legal framework: The legislator adopted a flexible criminal justice philosophy, which allows judges and executive authorities, within certain parameters, to exercise discretion and tailor punishments to the specific

¹⁶ - Saied Mustafa Saied, Commentary on the General Provisions of the Penal Code, 4th edition, Dar al-Maaref, 1962, pp. 684-685.

¹⁷ - Mahmoud Najeeb Hosny, Commentary on the Penal Code: General Part, 6th edition, Dar al-Nahda al-Arabia Publishing House, 1989, p. 874.

circumstances of each case, by classifying crimes into different degrees and setting minimum and maximum penalties.

It is natural that the legislator cannot know every detail of a crime, no matter how precise the legislation may be. The severity and type of punishment are matters of discretion, which must take into account the circumstances and motives of each individual offender. Furthermore, the role of the judge, who is familiar with the offender's case and circumstances, cannot be denied; therefore, it is only logical that the judge should have the authority to determine the appropriate punishment. The legislator's role is simply to set a range or a maximum limit for the punishment, while the judge has the authority to determine the specific penalty within that range. This flexible legislative framework has allowed the legislator to make fines an alternative to imprisonment in mitigating circumstances. It has discretionary power in this regard¹⁸, and some legislations even permit the substitution of a fine for imprisonment.

It should also be noted that the draft Penal Code adopts a philosophy of reducing the use of imprisonment, and therefore it expands the use of fines as an alternative to many types of custodial sentences. Furthermore, it allows for the option of choosing between a fine and imprisonment. This underscores the important role of fines as a punishment, and we hope that our lawmakers will not limit themselves to this option alone, but rather introduce other alternatives to achieve the desired punitive effect.

Secondly: The judge's discretionary power in sentencing: This means that the legislator has granted the judge the flexibility to determine the amount of the fine based on the circumstances of the offender, rather than imposing a fixed, standardized penalty. Individualizing the punishment is an essential aspect of the judicial function, and the judge must consider the nature of the crime and the circumstances and situation of the offender, which vary from one person to another.¹⁹

The rationale or purpose behind granting judges this flexibility in determining the amount of a fine within legal limits is to ensure individualized justice, by imposing a specific punishment for each individual that is proportionate to the crime committed and the circumstances surrounding it. Therefore, the punishment must be fair and proportionate to each defendant, thus reinforcing public trust in the judicial system. This flexibility also serves an important function: general and specific deterrence, and contributes to the rehabilitation and reintegration of the offender into society. It is also widely recognized that this power of judicial discretion plays a crucial role in protecting society from crime by punishing offenders with a suitable and just penalty.²⁰

18 - Ghayth Jumaa Saeed, "Modern Trends in Alternative Penalties as an Alternative to Short-Term Imprisonment: A Comparative Study," op. cit., p. 29.

19 - Salam Mohammad Al-Meqdad, The Impact of Judicial Discretion in Sentencing in Lebanese Criminal Judgments: A Comparative Study and Evaluation of Proposed Reforms, Arab Journal for Scientific Publishing, Volume 8, Issue 82, Publication Date: August 2, 2025, p. 114.

20 - Ahmad Ali Al-Khawaldeh, Alternatives to Short-Term Imprisonment: Non-Custodial Sanctions, Al-Thaqafa Publishing and Distribution House, First Edition, Amman, Jordan, 2024, pp. 181-182.

It also reinforces the principle of judicial independence, as it prevents judges from being bound by rigid legal texts, and enhances public confidence in judicial decisions, ensuring that they are made with sound judgment and a sense of fairness.

Therefore, modern legislation has adopted this degree of flexibility for judges, within a defined legal framework, providing them with a range of diverse and varied options. These include setting penalties within a minimum and maximum range, allowing for both mitigated and aggravated punishments, and offering a choice of penalties and alternative measures, such as a fine as an alternative to short-term imprisonment. Furthermore, the legislation allows for considerations such as installment payments, deferral, suspension of execution, or partial or full remission of the penalty, as well as adjustments to the amount based on the offender's financial circumstances. All these powers enhance the effectiveness of the criminal fine as a form of punishment.²¹

It is important to note that the judge must provide justification for the chosen punishment, explaining the reasons for imposing a more lenient or harsher sentence, or for opting for a fine instead of a short prison term, and so on. This is known as judicial reasoning, which is one of the most important objective safeguards that obliges the judge to individualize the punishment.²²

It should also be noted that a fine, regardless of its amount, is subject to suspension of enforcement. This means that when imposing such a penalty, the judge may order that its enforcement be suspended. However, this suspension does not apply to percentage-based fines. We conclude that the legislator acted wisely in adopting the fine as a primary penalty for minor offenses and misdemeanors, and as a supplementary penalty for felonies. Its application entails all the legal consequences of a criminal conviction, the primary one being that the convicted person must pay a monetary sum to the state treasury for violating the law. We have also explained the available methods of payment and how they are enforced. The legislator also considered the fine as an alternative to short-term imprisonment, and it is one of the most successful legal systems, particularly because it aims to protect society from crime and reduce its prevalence. This is due to its unique nature, which involves financial penalties, and it also grants judges flexibility in its application, depending on the offender's character, the nature of the criminal act, and the circumstances surrounding the crime.

This system also aims to protect human rights and dignity by avoiding imprisonment and its negative consequences, which undermine the primary purpose of rehabilitation and reform. A financial penalty, therefore, serves both economic and rehabilitative purposes.

Conclusion:

After presenting a detailed overview of the research topic, this section will focus on the key findings and some recommendations, as follows.

21 - Mahmoud Najeeb Hosny, *The Science of Punishment*, Al-Nahda Al-Arabia Publishing House, Cairo, 1973, p. 535.

22 - Salam Mohammad Al-Meqdad, *The Impact of Judicial Discretion in Sentencing in Lebanese Criminal Law*, op. cit., p. 119.

First: The results:

- A fine is an independent criminal penalty, separate from compensation and bail, and is paid to the state treasury. It constitutes a source of revenue for both developing and developed countries.
- It is considered a primary financial penalty for misdemeanors and minor offenses, and a supplementary penalty for felonies. It is subject to the general rules governing the execution of penalties, such as pardon or amnesty. The amount of the fine may vary depending on the number of defendants, and its execution can be suspended. It can only be imposed on those criminally liable, and joint and several liability is not permitted, except in the case of percentage-based fines. Furthermore, it is subject to legal principles such as the principle of legality, judicial authority, and the principle of personal responsibility.
- The imposition of physical restraint is not affected by any period of pre-trial detention already served, as the nature of the two is entirely different, and therefore there is no basis for offsetting one against the other.
- The deterrent effect of a fine as a punishment is more effective than that of imprisonment, because it reduces a person's financial resources, and it is therefore more difficult for the offender to become accustomed to it, unlike imprisonment.

Second: Recommendations:

- We urge our lawmakers to introduce alternative punishments to short-term imprisonment, and not to rely solely on fines.
- We also recommend that they establish a specific, precise, and transparent mechanism for determining the actual income of the convicted person, as fines do not ensure equal treatment for all, and to prevent giving judges the power to arbitrarily assess the value of human life.
- In some cases, the law does not set a maximum limit for fines, leaving this entirely to the judge's discretion; therefore, certain safeguards must be introduced to protect the rights of the individual.

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