

A new perspective on the fine and compensation In the Iraqi criminal law

Al Jashami Muhammed Khariy Qsair¹

Abstract: The fine penalty is similar to the death penalty and imprisonment, but those punishments physically target the human body, The fine is a financial penalty aimed at the financial liability of the offender. A fine may be an original penalty to be judged only, A sentence of sentence may be imposed in addition to the prison sentence. If the fine is paid to the sorrow of the state, compensation is paid to the victim as an attempt to restore the situation to where it was before the crime. The fine and compensation in Iraqi criminal law remains one of the traditional concepts of determining the amount of fine in the relative quantitative sense and determining the amount of compensation with the appropriate scope of compensation. In this case, punitive damages will not be found to be applicable. This paper examines the need to modify many of the concepts in which the fine and compensation are dealt with in line with developments under criminal law.

Keywords: fine, compensation, punitive damages, criminal .

I. Introduction:

The fine is a penalty, It means obligating the sentenced person to pay to the government treasury the amount estimated in the judgment, And the fine in Iraqi law may be an original penalty and that is in the irregularities and misdemeanors, A supplementary sentence may be a penalty plus an original penalty such as a felony. The fine is intended to achieve many purposes, just as the rest of the sanctions aim, but the scope of their work is the financial aspect of the offender. The law sets out multiple provisions to determine the amount of fine because it cannot equal the fine as inequality in the fine does not mean a violation of justice. The Court has a broad discretion in determining the amount of the fine according to each crime and its circumstances, but is limited by the concept of the relative penalty. If the fine is paid to the state treasury, Compensation is paid to the victim to redress the material and moral damage suffered, although the principle of compensation is the principle of appropriate compensation. With the development of legal concepts and the wide incidence of violations, the need to review the scope of the fine and compensation in the area of the Penal Code, as well as to try to allow punitive damages to be used as a strong deterrent to such violations.

II. The nature of the fine in the Iraqi criminal law:

The fine under the Iraqi Penal Code is an independent penalty. A fine may be imposed as a penalty for a person in the event of a violation. Misdemeanor is a crime punishable by one of the following penalties: Severe imprisonment or fine ⁽²⁾. A contravention is a crime punishable by either simple penalty or fine ⁽³⁾. In this sense, the legal nature of the fine is that it is a punishment for a crime that has been described as a misdemeanour and falls within the definition of crimes in terms of severity.

The fine is characterized by punitive nature, and in this description it differs from compensation, the fine is not intended to compensate the injured person, Rather, the purpose of the fine is to punish the offender for the act he has committed. It is a general punishment because the state is charged and not the injured party ⁽⁴⁾. Although a fine is an obligation to pay a sum of money; it is distinguished from other financial obligations with certain characteristics:

It is legal, based on a text to be determined, as it is personal, is limited to the person responsible for committing the crime, in the sense that it does not transfer to the heirs. It is judicial, so that the judicial authority monopolizes jurisdiction by approving and judging it. It is also subject to the principle of abstraction, whether

¹ - Lecturer in college of law-THI-QAR University-IRAQ, PhD candidate in faculty of law- University of BUCURESTI, legalur@yahoo.com. muhammed_da@yahoo.com.

² - Iraqi criminal law No.111.1969 in article 26.

³ - Iraqi criminal law, article 27.

⁴ - see: Fines and restitution improvement needed in how offenders' payment schedules are determined, report to the chairman, senate committee on the judiciary, and the chairman, subcommittee on crime, house committee on the judiciary, united states general accounting office.1998,p3.

legislative or street, or a court that the judge takes into account when pronouncing it, these characteristics make it distinct from other financial sanctions.

A fine may be an original or supplementary penalty, It is an original punishment applied to both natural and moral persons, For a natural person, she finds her area of misdemeanor and Contravention as a penal penalty alone, or with imprisonment as a matter of choice or choice, The penalty for such crimes is not original, because the fine cannot achieve the purposes of the criminal penalty in this type of crime. As for the moral person, the fine as an original penalty finds its place in crimes, misdemeanour and offenses, And criminal fine as a supplementary penalty for a natural person, find their place in the criminal articles.

III. Functions of the fine in the criminal law:

The fine is the obligation of the accused person whose decision the court has made against him to pay to the State Treasury the amount specified in the judgment. The fine in the Penal Code performs three functions, either that the penalty is directly original, in the case that it is the sole penalty for the offense of misdemeanor or offense, Or that an original penalty is optional in the event that it is stipulated in the law as an optional sentence to be sentenced with or in place of imprisonment. Or to be a supplementary penalty and to be verified if provided for in the law as an additional sentence in addition to the original sentence. The fine is different from civil compensation because it is only intended to repair the damage while the fine is a deliberate pain intended to influence the will of the convicted person and his or her freedom from committing an unlawful act. The criminal fine shall differ from the disciplinary fine in that the latter shall not be imposed unless the offender is subject to a particular disciplinary regime as a result of a subordinate relationship of a particular body, they differ from the response because the answer is not punishment, It is the return of the thing that the crime was committed to the owner or the person who has possession of it.

IV. Characteristics of the fine in the Iraqi criminal law:

The fine is distinguished from other original punishments in that it does not constitute an assault on the human body or his freedom, And does not affect his honour or reputation or undermine his social status, As it does not take the offender from his family nor delay him from doing his work, And prefer to imprisonment, especially short-term imprisonment, As the convict is excluded from mixing with other convicts and avoiding him in the midst of corrupt prisons, which may constitute a moral threat to him, A penalty which can be reversed if there is a mistake in signing it to show that the convicted did not commit the crime and this is contrary to the death penalty, for example, cannot be reversed if his innocence emerged after the implementation of the sentence.

And can be matched with the gravity of the crime and the seriousness of the actor is indivisible and the judge can determine the amount to take into account all the circumstances of the incident before it. A punishment suitable for crimes motivated by greed in the money of others and the desire to enrich at the expense of theft, fraud and misuse of credit, It is a penalty of the sex of the crime. The fine does not cost the state anything, but is a source of public revenue, and this is different from the anti-freedom sanctions that require the state to spend large sums. With all these advantages of fine, it was taken that it does not achieve the principle of personal punishment, as the impact is not limited to the convicted, but exceeds the people who depend on them even indirectly. It does not achieve equal punishment among individuals if it is trivial for the rich and the heavy on the poor and sometimes difficult or impossible to implement if the convicted poor or evade payment, which leads to the disruption of the sentence issued or to replace the penalty of imprisonment.

The fine as punishment is a clear application of the principle of personal punishment⁽¹⁾. In the sense that the fine can be applied only to the sentenced,

Although some believe that the Iraqi law out of the principle of personal penalty in the fine based on the content of Article 152 of the criminal law². We believe that this trend is not entirely successful, because the

¹ - This principle is based on the Constitution of the Republic of Iraq for 2005 in Article 19/8.

² - The Iraqi criminal law No. 111 of 1969 in Article 152 provided that "If the convicted person dies before the sentence becomes final, the crime shall be dropped and all traces of this shall cease The judgment is that the person harmed by the crime has the right to bring proceedings before the competent civil court. However, if he dies after the final judgment, the penalty and the precautionary measures imposed shall be dropped Except for financial penalties such as fines and restitution and financial precautionary measures such as confiscation and closure The shop they carry out in his estate in the face of his heirs"

content of that article is inconsistent with the content of the constitutional provision that provides that the penalty is personal, As well as with the constitutional text, which does not specify the enactment of a law that contradicts the provisions of Islamic law,

It is a fixed Islamic law that each person bears responsibility for his actions¹, while the Egyptian Criminal Procedure Law issued the provision that the state be granted the right to enforce the fine in the face of the heirs of the condemned. He decided that if the sentenced person dies after his final sentence, the financial penalties, compensation, restitution and expenses in his estate⁽²⁾.

V. The fine is an estimated penalty for the court:

There is no problem that the amount of fine varies from crime to crime,

This is a natural issue because some crimes may be cruel and some are even milder, For example ,In misdemeanors the fine is not specified, While the violation of the law set the amount of the fine not more than thirty dinars.

The real problem is that the fine is predetermined and does not take into account any criteria or circumstances relating to the offender. In other words, if it is possible to apply prison sentences to all offenders, The penalty of fine when applied may benefit the rich without the poor, A financially incompetent offender will pay the fine easily, But some poor offenders may refuse to pay the fine, And then the court will be forced to imprison until the payment of the fine, Which will cost the state a lot of expenses and we will be in a new situation, Instead of being a financial revenue to the state treasury, The fine will be a burden on the state within this concept⁽³⁾. We find that the trend of Iraqi law was a correct trend in granting the court discretion in assessing the fine as a kind of justice, The criminal law provided that the court shall take into consideration the financial and social situation of the convicted person and the crime he or she foresaw, and the circumstances of the crime and the case of the victim. The amount of the fine shall not be less than half a dinar and not more than five hundred dinars unless the law provides otherwise⁽⁴⁾. We propose that the law needs to be amended to limit the imprisonment of the offender by resorting to alternative sanctions in the case of a financially incompetent criminal⁽⁵⁾.

With regard to the amount of fine imposed by the court on the offender, the Penal Code has adopted the principle of proportional quantitative gradation, which included Article 91 by saying "the amount of the fine shall not be less than half a dinar and not more than five hundred dinars unless the law provides otherwise "The law first established a lower ceiling and a higher ceiling for fine,

¹ - The Constitution of Iraq in Article 2 / A. It is not permissible to enact a law that contradicts the principles of Islam

² - Egyptian Criminal Procedure Law No. 150 of 1950 in article 535.

³ -This is what the Criminal Procedure Code No. (23) of 1971 refers to In Article 299, which stipulates that "a - If a person is sentenced to a fine, whether with or without imprisonment, the court may impose his imprisonment if he does not pay the fine for a certain period not exceeding half the maximum limit for the offense if it is punishable by imprisonment and a fine. B -If the offense is punishable by a fine only, then the period of imprisonment imposed by the court in case of non-payment of the fine shall be one day for every half a dinar, provided that the period of imprisonment in this case shall not exceed two years". We also find the same sentence In the Iraqi Penal Code No. 111 of 1969 Under article 93 "1. If a criminal is sentenced to a fine, whether with or without imprisonment, the court may impose his imprisonment on non-payment of the fine for a certain period not exceeding half the maximum limit for the offense if punished by imprisonment and a fine. If the offense is punishable by a fine only, then the period of imprisonment imposed by the court in case of non-payment of the fine shall be one day for every half a dinar, provided that the period of imprisonment shall not in any case exceed two years. See also The Lebanese Criminal Procedure Code No. 328 of 2001 in Article 415, which provides that "a person convicted of judicial expenses shall pay it to the State Treasury Fund within ten days from the date of his warning after The judgment becomes conclusive. If he fails to pay, the Public Prosecutor decides to imprison him for twenty-four hours for every ten thousand lira. The term of imprisonment shall not exceed six months "

⁴ - See: Article 91 of the Iraqi criminal law.

⁵.-see: Handbook of basic principles and promising practices on Alternatives to Imprisonment, criminal justice handbook Series, United Nations office on drugs and crime,2007,p18.

The Court was then given discretion in determining the appropriate amount of the offense committed. The court depends on the severity of the crime or its simplicity in estimating the amount of the fine. In the case of multiple offenders, the law distinguishes between the fine in its general form and the relative fine, In the case of a fine imposed on several accused by a single judgment for a single crime, whether they are actors or accomplices, the fine shall be imposed on them, except for the relative fine.

In addition to the original penalty, the relative fine shall be determined in proportion to the damage resulting from the crime or interest that the offender has achieved or wanted from the crime and shall be sentenced to the accused in one crime on the face of solidarity, whether they are actors or partners unless the law provides otherwise⁽¹⁾.

VI. Fine and punitive damages and the position of the Iraqi criminal law:

A fine in its nature is punishable imprisonment; it aims to punish the offender for the act he has committed and to deter others from committing the same act in the future. But the fine is different from the prison sentence in that it is a financial penalty located on the money of the offender and not on his body.

Under this concept, punitive damages⁽²⁾ almost match the fine, but a deeper analysis of the way and method of dealing with the Iraqi criminal law makes us in a situation that is counterproductive. It is true that the fine and punitive damages are both financial penalties for the money of the offender, both are aimed at punishment and deterrence, but, at a time when the fine goes to the state treasury, the victim is the beneficiary of punitive damages. Also, the law has blocked the door in the face of the application of punitive damages by determining the ceiling of the highest fine, This limitation prevents the application of punitive damages because the latter does not have prescribed limits and it relies in its estimation on what the court is appropriate and sufficient punishment for the offender and deterrent to others. The last point is that the law provided for a fine, but punitive damages did not include any provisions. The other point is that punitive damages are granted in a civil suit while the fine is awarded in a criminal case. . The most powerful obstacle to the application of punitive damages in the criminal law is an obstacle arising from the criminal law itself, Where the law provided for the punishment of unlawful gain as a crime punishable by a penalty that does not include a fine, The law determined that if a crime was committed with the intention of obtaining unlawful gain and the law was punishable by a penalty other than fine, the sentence may be imposed as well as the legally prescribed penalty for the crime,

Shall be liable to a fine not exceeding the value of the gain achieved or intended by the offender unless the law otherwise provides⁽³⁾.

VII. Limits of the compensation in the Iraqi criminal law:

The original is that the claim for compensation is before the civil courts, but the law allowed the exception of the claim for compensation before the criminal court when it was a criminal case and the right of the plaintiff arising directly from the wrong act that is the component of the crime the subject of the criminal case, If the damage caused by this crime is not the result of such a crime, the criminal courts are not competent to hear the civil proceedings.

The Iraqi criminal law dealt with compensation in specific cases, namely, those designed to compensate the victim affected by the criminal act that was inflicted upon him. Acts that cause harm to the community were dealt with through the fine. The law began with a general rule that the provisions of this law do not affect what is the duty of the opponents to respond or compensation⁽⁴⁾.

The law confused compensation and fine in suspended sentences, He made the fine equal to the compensation we do not know Is this confusion deliberate or wrong? The law determined that "The court may order the execution to oblige the sentenced person to pledge good conduct during the period of suspension of execution in accordance with the provisions of Article 118 or to oblige him to perform all or part of the sentenced award within a period specified in the judgment or committed to both matters".

¹ - Paragraph 2 of Article 92 of the Iraqi criminal law no.111of 1969.

² - Punitive damages are "monetary damages that may be awarded to the plaintiff in a civil lawsuit apart from and in addition to compensatory damages. Several purposes have been attributed to such damages, most importantly punishment and deterrence of the defendant for wrongfully harming the plaintiff "see Renée Charlotte Meurkens, punitive damages, the civil remedy in American Law, Lessons and Caveats for Continental Europe, Kluwer,2014,p37.

³ - See: article 136 of the Iraqi criminal law.

⁴ -See: article 17 of the law.

The most prominent cases dealt with by the criminal law and treated with compensation are the case of rape of a female. Noting that among the many cases considered by the law as an aggravating circumstance for the crime of female rape or sodomy by a male was not ruled compensation only in the case that the female who was assaulted is a virgin female⁽¹⁾.

Here we note that the law has stated the words "shall be subject to appropriate compensation" But the text did not specify whether the appropriate compensation, the amount or the criteria for determining such compensation to be appropriate, the term "appropriate" is not clearly defined, In the sense that it is suitable for whom? for the victim? or the perpetrator? Because if we say that it is suitable for the victim there is nothing that can compensate for the psychological damage suffered by the victim at the moment of crime and in the future, Our proof and proof of this is that the law itself has stressed the penalty of this crime to death⁽²⁾.

On the one hand, and on the other hand, the law has repeated the phrase "appropriate compensation" at the commission of the same crime, but with the difference that the crime was signed with the consent of the victim. It must be said that the appropriate compensation with the satisfaction and acceptance of the victim must be different from The appropriate compensation for the commission of the crime by coercion. The question here is whether the idea of punitive damages to this crime can be imposed when committed by coercion and without the consent of the victim? We believe that there is no objection to the imposition of punitive damages in this case the element of intent and slander is available at the commission of the crime and that the purpose of punishment and deterrence can be achieved⁽³⁾.

Conclusion

The Criminal law aims at identifying the appropriate crimes and penalties in order to preserve the stability of the society and the safety of its members. In all penal legislation there were two kinds of punishment, Corporal punishment of death or imprisonment, as well as financial punishment, which is evident in the form of fine and compensation. The Iraqi criminal law guarantees the fine in all its details and determines the amount and areas of imposition and the penalty of refraining from it.

The law also addressed the scope of the application of compensation, which was limited to very specific cases and the concept of adequate compensation. There is a real need to redraft the penal and penal provisions in the Penal Code and to expand their scope and resort to the concept of alternative penalties, in addition to alleviating the state's obligations to provide the appropriate environment for imprisoning the offender and possibly achieving the goal of deterrence and punishment.

¹ - This provision is contained in article 393 of the Penal Code with many other aggravating circumstances.

² - The Revolutionary Command Council Resolution No. 488 of 11/4/1978 was issued with the death penalty of each of the female relatives of the third degree without her consent. She was fifteen years old, and did the act to her death, or led to the pregnancy or remove her dignity. The Coalition Provisional Authority suspended the death penalty under Order No. 7Section 3 of 11 June 2113. And when sanctions Imposed on perpetrators of rape and sexual assault to life imprisonment) Which does not end until the death of the offender.. Of 17 September 2113 issued by the Coalition Provisional Authority. Then a number was issued 3 of the year 2114 on the Iraqi interim government to restore the death penalty No. 3 For the year 2114.

³ - Article 394, 1. A penalty of imprisonment for a term of not more than seven years or imprisonment shall be imposed on a woman who is not married.3 -If the victim is a virgin, the court shall be entitled to appropriate compensation.