

Manifestations of the shift away from the penal nature of business crimes

Submission date: 12/02/2024

Accepted date: 29/06/2024

Fatima Zohra LIRATNI *
University of Oum El Bouaghi
Laboratory for Legal and Political
Studies
liratni.fatima.zohra@univ-oeb.dz

Abstract:

The legislator's inclination and preference for imposing moderate penalties in the realm of business crimes, predominantly characterized by financial aspects, stem from the recognition of the ineffectiveness of harshness in achieving the objectives of punishment. Financial penalties in the field of finance and business are

capable of achieving deterrence and bringing economic benefit to the public treasury. This is a precursor to moving away from the punitive nature in the business sector and the emergence of new concepts to counter the negatives of legislative inflation or the penal legislative frenzy, which has become an obstacle to the entrepreneurial spirit among business operators.

Keywords: Business Criminal Law; Limiting Punishment; Punitive Character; Criminalization.

Introduction:

The field of business criminal law is the primary domain for moving away from punitive solutions and limiting both the policy of criminalization and punishment. It is one of the fields most affected by this policy, where contemporary criminal policy tends towards reducing the excessive use of penal punishment in business activities, due to its negative impacts on attracting investment and developing economic activity.

This includes commercial and economic considerations that impose themselves on the legislator in this field, as it constitutes a dangerous weapon against company managers, causing many to shy away from entrepreneurial spirit for fear of facing criminal liability. This is seen as a threat to individual rights and freedoms under the pretext of protecting the state's higher economic interests. While the principle of necessity requires legislative intervention with penal rules to protect legitimate interests such as competition, the principle of proportionality demands

* - Corresponding author.

that this intervention should not become a constraint on the freedom of trade and investment.

Good legislative policy requires balancing in the face of these economic deviations and dealing with them with a degree of flexibility to avoid the problem of legislative inflation in the criminal field. Given this situation, it was necessary to change the punitive policy strategy in line with the modern trend calling for the search for alternative systems that achieve contemporary punitive purposes with lower costs and greater effectiveness. This led to the emergence of a direction advocating the necessity to rationalize punishment, which evolved into the necessity of adopting a policy of limiting punishment, especially short-term freedom-depriving sanctions that have proven to be ineffective in achieving their objectives.

This is in addition to the negative effects resulting from the application of this type of punishment. In contrast, the advantages of administrative penalties, especially in some business crimes, lead us to explore the phenomenon of limiting punishment as one of the forms of embodying the policy of not resorting excessively to the penal system, where the illegitimacy of the act remains with a reduction in the severity of punishment or finding alternatives to it. This allows questioning the effectiveness and efficiency of this policy aimed at reducing penal punishment and moving towards what is known as administrative punishment in facing this type of economic and financial nature crimes.

Thus, this study aims to illustrate the nature of the sanctions imposed to address business crimes and to examine their specificity compared to those imposed for general law crimes, by adopting a descriptive and analytical approach to analyze the relevant legal texts.

The problem will be researched through demonstrating the forms and applications of limiting punishment after addressing the concept of punishment itself.

Chapter I: Definition of Limiting Punishment

The policy of limiting punishment is seen as a retreat by the legislator from the penal solution in the field of business crimes, considering it a strong shield for protecting public and private interests, and a means to ensure respect for legal and regulatory texts.⁽¹⁾ Due to the novelty of this approach in contemporary penal policy, the doctrine has been divided into several directions in defining it, which can be summarized into four approaches as follows: ⁽²⁾

- **The first approach** views limiting punishment as making the behavior completely permissible, thereby not subjecting it to any penalty. From this perspective, Western doctrine, led by Professor "Bonnie," defines limiting punishment as "the abolition of the application of penalties, whatever their type."⁽³⁾

This approach has been critically assessed to the extent that it is said to be utterly unreliable, considering that limiting punishment does not necessarily mean the complete abolition and dispensation of punishment. It differs from limiting criminalization and should not be confused with it, as it does not lead to a complete shift away from the penal system.⁽⁴⁾

- **The second approach** believes that limiting punishment entails making the penalty less severe while the behavior retains its penal character, meaning it is not permissible in a penal sense.⁽⁵⁾ According to this approach, limiting punishment is conceived only within the penal system. Consequently, Professor "Lefasour" defines limiting punishment as "maintaining criminalization but with significantly or slightly reduced deterrence."⁽⁶⁾ Similarly, the European Committee for Problems of Criminalization defines limiting punishment as "all forms of reduction within the penal system," where this reduction or mitigation of punishment's severity includes reclassifying a crime from a felony to a misdemeanor, or a misdemeanor to a violation, in addition to all cases where less severe and less impactful penalties replace freedom-depriving punishment, such as replacing it with a fine or probation.⁽⁷⁾

In the same context, a segment of Egyptian ⁽⁸⁾doctrine believes that limiting punishment does not necessarily mean the complete and total abolition of punishment but rather the abolition of some penalties or the prevention of multiple penalties. However, this opinion does not recognize administrative fines, as it completely rejects the contemporary direction advocating for administrative authorities to have the power to impose fines as an alternative to punishment. This procedure is viewed, according to the same opinion, as conflicting with the constitution, which states that no penalty can be applied except by judicial ruling.

This approach is credited for not confusing limiting criminalization with limiting punishment, as it was more specific and precise than its predecessor. However, it is criticized for its traditional approach in



viewing limiting punishment, where it focused solely on significantly or slightly mitigating the penal system. Nevertheless, limiting punishment, according to modern penal policy, takes several new and diverse forms to the extent of establishing alternatives to these penalties.

- **The third approach**, contrary to the previous ones, sees that limiting punishment does not lie in mitigating the penal penalty but in transferring the behavior from the scope of criminal law to another non-penal law, such as civil or administrative law. ⁽⁹⁾Accordingly, this approach defines limiting punishment as "the transition from forms of criminal offenses to civil or administrative offenses, by replacing the penal penalty with a non-penal penalty."⁽¹⁰⁾

This is the same definition included in the report of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1975, where limiting punishment was defined as "a legislative measure that enables civil and administrative judicial authorities to consider some criminal offenses, by replacing the penalties previously applied with non-penal penalties."

Western doctrine also defines limiting punishment as "abandoning the penal system in favor of another alternative civil or administrative system or through mediation." ⁽¹¹⁾Arab jurisprudence supports this definition, considering that limiting punishment means "a complete shift away from criminal law in favor of another legal system," where the act, under this concept, is decriminalized and thus becomes permissible from a penal perspective, ⁽¹²⁾while remaining unlawful under another law, with other non-penal sanctions being prescribed, generally administrative financial penalties imposed by the administration according to administrative procedures under judicial oversight. Thus, this approach advocates for the creation of a distinct and separate law from the general penal code to prescribe such specific sanctions, referred to as administrative penal law or administrative punitive law.⁽¹³⁾

This approach is credited for its focus on the necessity of transitioning from the penal system to an alternative non-penal legal system, stemming from contemporary penal policy trends towards not overusing such penalties, especially in certain business crimes. However, it is critiqued for overlooking forms of limiting punishment that occur within the penal system itself, through mitigating the severity

and strictness of penal sanctions, especially since limiting punishment originally emerged within the penal system, then evolved to take new forms through the introduction of non-penal sanctions, such as civil, administrative, or professional penalties. Therefore, it was necessary to include such forms and not exclude them from the definition of limiting punishment.⁽¹⁴⁾

- **The fourth approach** attempts to combine all forms of limiting punishment addressed by the previous three approaches, considering it as any form of penalty mitigation within the penal system or outside it through transitioning to another non-penal legal system. According to this conciliatory approach, limiting punishment refers to mitigating penalties on one hand, and on the other, to the reduction or abolition of freedom-depriving sanctions in favor of alternative sanctions.

From this perspective, Western jurisprudence has provided a definition of limiting punishment as "any form of mitigation within the penal system, and all forms of abandoning this system in favor of another alternative civil or administrative system or through mediation⁽¹⁵⁾." This definition is considered the most logical and capable of encompassing the concept of limiting punishment, as it includes both traditional and modern forms.

In the same context aiming to cover different forms of limiting punishment, this approach distinguishes between two types of limiting punishment: relative limiting of punishment, which includes all forms of mitigation within the penal system itself, such as downgrading a felony to a misdemeanor and a misdemeanor to an infraction, and absolute limiting of punishment, which occurs by abolishing penal sanctions applied to a specific behavior and replacing them with non-penal sanctions.⁽¹⁶⁾

Limiting criminalization and limiting punishment share the origin of goals and objectives of contemporary legislative penal policy aimed at not overusing the penal system, according to the necessities and proportionality. However, they differ in that limiting criminalization leads to the legal abolition of the penal rule, both in terms of duty and sanction, or narrowing its scope of application, while limiting punishment affects only the sanction aspect, leaving the duty aspect intact, based on the legislator's view that the protected interest by the penal rule is worthy of protection, and such protection can be achieved

through mitigating the penal sanction or replacing it with a non-penal sanction, according to the legislator's discretion.⁽¹⁷⁾

Some have proposed a definition of limiting punishment⁽¹⁸⁾ as "a legislative measure of an objective nature, taken by the legislator according to his discretion based on the criteria of necessity and proportionality, to modify the penal rule in its aspect related to the sanction, by either replacing it with other less severe penal sanctions or with non-penal sanctions within another legal system."

Such insights reflect the modern approach in the concept of punishment, moving away from the idea of pain and harshness, which no longer align with the purposes of punishment based on reform, discipline, rehabilitation, and social reintegration. Therefore, limiting punishment in this sense has become a fundamental principle of contemporary penal policy, relied upon by the legislator to move away from the punitive nature of criminal law, especially in the field of business crimes⁽¹⁹⁾, where administrative sanctions have become an alternative to avoid the negatives of short-term freedom-depriving sanctions that have proven ineffective and inefficient in achieving deterrence, both general and specific. This type of sanction also contributes to reducing the phenomenon of legislative inflation in penal law.⁽²⁰⁾

Chapter II: Forms of Limiting Punishment

Legislations have varied in their application of the policy of limiting punishment as a modern approach, especially for less serious crimes that are punishable by short-term penalties. Some have embodied this policy within the framework of the penal system alone, by replacing freedom-depriving penal sanctions with mitigated penalties, while others have introduced sanctions that go beyond the penal field, known as administrative penalties,⁽²¹⁾ which will be elaborated on successively.

1. Forms of Limiting Punishment within the Penal System

Among the most important of these forms are the system of suspending the execution of the sentence, the system of conditional release, the system of amnesty, in addition to expanding the scope of the fine penalty at the expense of imprisonment, especially in the context of business crimes. All these are traditional forms aimed at mitigating the severity and harshness of the penal sanctions depriving freedom.⁽²²⁾

In the context of business crimes within the policy of limiting punishment in the penal system, the legislator has preferred financial penalties over their freedom-depriving counterparts, considering that most business crimes are committed with the motive of greed and illicit profit. Thus, it was more appropriate for the penalty to be of the same nature as the act, thereby affecting the offender financially through imposing severe financial penalties on the perpetrator to deter them and force them to respect the rules regulating the activity.⁽²³⁾

Despite the advantages of resorting to financial fines as an alternative to freedom-depriving sanctions, some argue that it cannot be relied upon as a deterrent penalty in the field of business crimes, as it undermines the principle of equality among the sentenced and includes elements of injustice and discrimination. The wealthy may not feel the impact of such a penalty, whereas the poor cannot afford it.⁽²⁴⁾

To avoid the negatives of a fixed fine, some legislations have moved towards applying a proportional fine, which is determined based on a specific element, like the value of the money involved in the crime or the weight and volume of the goods. This is more commonly applied in business crimes, as it is more compatible with the business environment, noting that achieving the desired deterrence with a proportional fine requires the legislator to specify a minimum for it, as basing it solely on the crime's subject could lead to imposing an ineffective and trivial fine.⁽²⁵⁾

A fine, as a monetary sanction, can be of a penal nature or a fiscal nature. Penal fines are grounded in general law, the penal code, while fiscal fines appear in some laws, such as the customs law, which specifies a customs fine for the crime of smuggling.⁽²⁶⁾

Both the customs law⁽²⁷⁾ and smuggling law⁽²⁸⁾ distinguish between acts of smuggling and other crimes, as well as between violations and misdemeanors. The fine for a violation is fixed by law and generally stable, whereas the fine for a misdemeanor is estimated based on the value of the counterfeit goods.⁽²⁹⁾

In prescribing fines as a financial penalty, which is predominant in business crimes, the legislator distinguishes between fines imposed on natural persons and those imposed on legal entities in terms of the minimum fine. For example, Order No. 96/22 related to suppressing violations of legislation and regulations on foreign exchange and capital movement specifies that the fine for a legal entity is estimated at four

times the value of the violation or attempted violation, whereas the minimum for a natural person is twice the value of the violation or attempted violation. Such cases are frequently repeated in business crimes in many relevant legal texts.

In addition to replacing short-term freedom-depriving penalties with financial fines, which are widely applied in business crimes, new forms of alternative penalties have been introduced within the penal system, the most important of which are:

- **Community service penalty:**⁽³⁰⁾

This penalty, issued by a competent judicial authority, involves the sentenced individual engaging in work for the public good without pay, as an alternative to incarceration.⁽³¹⁾

The Algerian law is among the Arab legislations that were pioneers in adopting this alternative penalty, through Law No. 09-01.⁽³²⁾ The legislator specified the conditions and terms for applying this penalty under Articles 5 repeated 1 to 5 repeated 6 of the Penal Code, aiming to enhance and align with the national punitive policy fundamentally based on the idea of reforming and rehabilitating the sentenced individuals in preparation for their reintegration into society.

- **Deferred Sentence System:**

This system is a new form of individualized sentencing adopted by several European legislations, particularly the French legislation, which adopted it under Law No. 624 dated July 11, 1975.⁽³³⁾ The Algerian legislator, however, has not adopted this system and has not taken any steps towards it, settling instead for the simple suspension of execution.

This system is applied at the end of the trial and upon the conviction of the defendant, then refraining from announcing the sentence for a temporary period based on specific conditions.⁽³⁴⁾ If these conditions are met, the sentence can be waived, aiming to avoid the negatives of traditional punishment, especially when the act does not involve significant danger.⁽³⁵⁾

The application of this system takes three forms:⁽³⁶⁾

- **Simple Deferral:**

Here, the judge may defer the sentence if it appears that the defendant is on the path to reform and is unlikely to reoffend.

▪ **Deferral with Probation:**

This involves subjecting the sentenced individual to judicial supervision throughout the deferral period, which is set at a maximum of one year.

▪ **Deferral with a Specific Order:**

The sentence is deferred for a temporary period during which the sentenced individual must comply with a specific order or perform a specific act determined by the judge. This form is used in cases of omissive crimes where the crime's cause is the failure to fulfill obligations specified in the law or the rules governing the activity or project. This penalty is deemed most suitable for rectifying the crime's damage and reforming and disciplining the project owner or person responsible to respect laws and regulations without tarnishing their reputation and future in the market.

▪ **Day-Fine System:**

This entails obliging the sentenced individual to pay a monetary amount in daily units to the treasury, with the judge determining their number and value considering the defendant's circumstances, income, responsibilities, and the circumstances of the crime's commission. According to some, this makes it more just than the ordinary or traditional fine.⁽³⁷⁾

▪ **Electronic Monitoring System:**

Also known as electronic tagging or house arrest, this is a modern method of executing short-term freedom-depriving sentences outside the penal institution's walls. The sentenced individual remains at home, with their movements monitored through a device resembling a bracelet or watch attached to their wrist or ankle.⁽³⁸⁾ This system has been adopted by many modern legislations as part of their penal systems, including the United States in 1980, Britain in 1989, Sweden in 1994, the Netherlands in 1995, and France and Belgium in 1997.⁽³⁹⁾

This system has several advantages, contributing to the development of limiting punishment policy and allowing for a greater variety of sanctions within the penal system, enabling judges to exercise discretion in individualizing punishment. However, it is criticized for not embodying the deterrent physical impact of punishment that involves an element of suffering, thereby potentially failing to achieve general and specific deterrence.⁽⁴⁰⁾



2. Forms of Limiting Punishment Outside the Penal System

These forms collectively constitute what is known as administrative sanctions⁽⁴¹⁾ or administrative penalties⁽⁴²⁾, applied under specific regulations and serving as an alternative to short-term freedom-depriving penalties outside the penal system framework, which are no longer sufficient to meet the aspirations of limiting punishment policy.⁽⁴³⁾

Some consider these administrative penalties an effective and viable means in the field of business crimes⁽⁴⁴⁾, finding it very appropriate to resort to this type of administrative sanctions in areas of this law, as they provide a more effective deterrent for perpetrators of such crimes than short-term imprisonment.

The use of administrative sanctions as a punitive method varies among comparative legislations and has recently seen widespread adoption in contemporary legislations. Some have developed a comprehensive system for administrative penalties, like the German Administrative Offences Act and the Italian Administrative Criminal Law, while others have included specific provisions, like the French legislation that employed administrative penalties within its legal system after creating special committees and councils authorized to impose administrative penalties for violations of laws and regulations related to the economy, traffic, labor, and environment in particular.⁽⁴⁵⁾

The Algerian legislator has followed the French model in dealing with general administrative penalties, issuing a large number of legal texts granting the administration the authority to impose administrative penalties on individuals⁽⁴⁶⁾, which can be categorized into two main types:

- **Financial Administrative Penalties:** These take the form of administrative fines resembling penal fines in that they are monetary amounts paid to the public treasury as a penalty. The administrative authority's power to impose these fines is limited within a minimum and maximum range, yet they differ from penal fines in that their execution cannot be suspended.⁽⁴⁷⁾

Looking at the various provisions that specify administrative fines as sanctions in the field of business crimes in Algerian law, we find among them:

- Article 45/2 of Order 03/03 related to competition⁽⁴⁸⁾, amended and supplemented by Law 08-12, grants⁽⁴⁹⁾ the Competition Council, as

an independent administrative authority, the power to impose financial penalties, either immediately effective or within deadlines it sets, for non-compliance with orders. Articles 56 to 62 detail the amounts of these fines, varying from a relative fine in Article 56, which does not exceed 12% of the turnover excluding taxes achieved in Algeria, and in Article 61, which does not exceed 7% of the same figure, in addition to a fixed fine of a specific amount or within a minimum and maximum range, and a coercive fine for each day of delay as mentioned in Articles 58 and 59 of Order 03-03.

- Article 64 of Law No. 15-04 on electronic signing and certification, which allows the economic authority to impose a financial penalty ranging from 200,000 to 500,000 DZD on electronic certification ⁽⁵⁰⁾service providers who fail to respect the terms of their certification policy or specification book approved by the economic authority.

- Article 100 of Law No. 04-14 on audiovisual activity permits the imposition of a financial penalty between 2% and 5% of the turnover, excluding taxes, on the legal entity licensed to operate an audiovisual communication service that fails to comply with a warning within the specified deadline issued by the Audiovisual Regulatory Authority as per Article 98 of the same law.

- **Administrative Penalties Restricting or Limiting Rights:**

The nature and specificity of business criminal law necessitate adopting this type of sanctions that are restrictive or prohibitive of rights, which are harsher compared to financial administrative penalties.

These sanctions are administrative measures aimed at protecting the public, preventing potential hazards, or preventing crime from occurring. ⁽⁵¹⁾ Key among these sanctions are:

- **Withdrawal of the License to Operate:** The administration sometimes resorts to this in the face of anyone who exercises the activity granted by this license in a manner contrary to laws and regulations. It may take the form of permanently canceling the activity or temporarily suspending it, as the license does not grant rights but is considered administrative decisions that generate acquired rights. ⁽⁵²⁾

Applications of the penalty of license withdrawal or suspension in Algerian legislation include:

- Articles 101 to 104 of Law No. 14-04 on audiovisual activity.



- Articles 64/2 and 65 of Law No. 15-04 on electronic signing and certification.

- Article 64 of Law No. 11-04 defining the rules governing real estate promotion, ⁽⁵³⁾which distinguishes between three types of withdrawal depending on the severity of the violation committed by the real estate promoter: temporary withdrawal of accreditation, final withdrawal of accreditation, and automatic withdrawal of accreditation.

- **Closure:** This refers to prohibiting the operation of an establishment or commercial premises when it poses a risk to public order or violates laws and regulations.⁽⁵⁴⁾

Key applications of closure in Algerian legislation include:

- Article 46 of Law No. 04-02 defining the rules applicable to commercial practices, ⁽⁵⁵⁾which allows the governor, based on a proposal from the Director of Commerce, to take administrative closure measures for commercial premises for up to thirty days in case of regulatory violations.

Conclusion:

Various comparative legislations in the business field have adopted unconventional provisions that transcend what was considered established principles, which must be respected in the processes of criminalization and punishment. Foremost among these is the policy of moving away from the punitive nature in combating crime, resulting in the emergence of new phenomena that have influenced studies in criminal jurisprudence, including the phenomenon of limiting punishment.

- Results:

From this study, the following conclusions were reached:

- Excessive criminalization and punishment act as constraints on trade, investment, and the entrepreneurial spirit of business operators, who fear the sword of criminal law and criminal sanctions, prompting criminal jurisprudence to advocate for the necessity of limiting or altogether abolishing criminalization.

- Numerous legal, logical, and practical considerations have necessitated the intervention of criminal law in the business field, becoming an imposed reality. This comes with the proliferation and extravagance in resorting to criminalization and punishment, which has become a deterrent to the entrepreneurial spirit of business people, fearing the consequences of criminal liability and the ensuing sanctions.

- Legislative inflation in the criminal field has led to the emergence and prominence of voices calling for the necessity of limiting criminalization and punishment, ideas that have imposed themselves in many comparative legislations.

- The Algerian legislator has managed to keep up with many developments related to the specificity of business criminal law, through numerous new laws and many amendments experienced by the legal system, especially after the national economy opened up to the global market and attempted to join some international economic and trade blocs.

- Despite the Algerian legislator's modern approach in incorporating some administrative sanctions, they remain insufficient despite the positives of this system.

- Recommendations:

Based on the results reached, we recommend the following:

- The creation of a special and independent codification of sanctions that includes the general provisions of business criminal law, emphasizing the necessity of its independence and preserving the strength and coherence of the traditional penal code, which has become affected by the flexibility of business criminal law rules in some of its provisions.

- It is crucial to emphasize imposing penalties proportional to the offender's economic status or the proceeds and benefits of the crime to the criminal, by expanding the application of relative fines instead of fixed fines in business crimes.

- The necessity of reducing the intensity of criminalization and punishment in the field of business crimes, by adopting a clear and well-considered policy to limit them, along with expanding the scope of administrative penalties and surrounding them with all the guarantees provided for criminal sanctions.

- Judges need to tend towards alternatives to penalties whenever possible and available to them, which could reduce the volume of cases presented to the judiciary, in addition to avoiding short-term freedom-depriving penalties due to their many disadvantages resulting from their application.

Referrals and References:

- (1)- Abdelkader Azoua, Najat Dehimi, "Contemporary Criminal Policy in Business Crimes," African Journal of Legal and Political Studies, Volume 031, Issue 02, Ahmed Draia University, Adrar, December 2019, p. 128.
- (2)- Mahmoud Taha Jalal, "Foundations of Criminalization and Punishment in Contemporary Criminal Policy," First Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 291.
- (3)- Michel Van De Kerchove, "Le droit sans peines, Aspects de la dépenalisation en Belgique et aux États-Unis," P.U.F, Saint-Louis, Brussels, 1987, p. 307.
- (4)- Ahmed Fathi Sorour, "Constitutional Criminal Law," Second Edition, Dar Al-Shorouk, Cairo, 1422 AH - 2002, p. 165.
- (5)- Georges Levasseur, "The Problem of Depenalization," A.P.C, no 06, 1983, p. 57.
- (6)- Council of Europe, European Committee on Crime Problems, Report on Decriminalization, Strasbourg, 1980, p. 17.
- (7)- Amin Mustafa Mohamed, "The General Theory of Administrative Penal Law," Dar Al-Jamea Al-Jadeeda for Publishing, Alexandria, 2008, p. 23.
- (8)- Ahmed Fathi Sorour, Ibid., p. 166.
- (9)- Mahmoud Taha Jalal, Ibid., p. 292.
- (10)- Michel Van De Kerchove, Ibid., p. 305.
- (11)- Mireille Delmas-Marty, "Permanence or Drift of the Liberal Model of Criminal Policy," A.P.C, no 06, 1983, p. 41.
- (12)- Mohamed Sami Al-Shawa, "The Penal Administrative Law: The Phenomenon of Limiting Punishment," Dar Al-Nahda Al-Arabiya, Cairo, p. 10.
- (13)- Amin Mustafa Mohamed, Ibid., p. 160.
- (14)- Mahmoud Taha Jalal, Ibid., p. 293.
- (15)- Jean Pradel, "Economic Criminal Law," 2nd ed, Dalloz, Paris, 1990, p. 27.
- (16)- Michel Van De Kerchove, Ibid., p. 317.
- (17)- Mahmoud Taha Jalal, Ibid., p. 297.
- (18)- Rashid Ben Friha, "Specificity of Criminalization and Punishment in Business Criminal Law: Commercial Companies Crimes as a Model," Doctoral Thesis for the Degree of Doctor of Science, Specializing in Private Law, Faculty of Law and Political Science, University of Abou Bekr Belkaid, Tlemcen, 2016-2017, pp. 342-343.
- (19)- Georges Levasseur, Ibid., p. 53.
- (20)- Mohamed Saad Fouda, "The General Theory of Administrative Penalties," Dar Al-Jamea Al-Jadeeda, Alexandria, 2010, p. 36.
- (21)- Mahmoud Taha Jalal, Ibid., p. 307.
- (22)- Ihab Al-Rousan, "Characteristics of Economic Crime - A Study in Concept and Elements," Notebooks of Policy and Law, Issue 07, June 2012, p. 101.
- (23)- Mahmoud Mahmoud Mustafa, "Economic Crimes in Comparative Law: General Provisions and Criminal Procedures," Part I, Second Edition, University of Cairo and Al-Kitab Al-Jamee Printing, 1979, p. 156.

- (24)- Mahmoud Taha Jalal, Ibid., p. 321.
- (25)- Mahmoud Mahmoud Mustafa, Ibid., p. 160.
- (26)- Ahsan Boussouquia, "Customs Disputes," Eighth Edition, Dar Houma, Algeria, 2015, p. 293.
- (27)- Law No. 17/04 dated 19 Jumada Al-Awwal 1438 AH corresponding to 16 February 2017, Amending and Supplementing Law No. 79/07 on Customs, Official Gazette No. 11 dated 19 February 2017.
- (28)- Order No. 05/06 amended by Order No. 06/09 dated 23 August 2005 on Anti-Smuggling, Official Gazette No. 59 dated 28 August 2005.
- (29)- Ahsan Boussouquia, Ibid., p. 290.
- (30)- The concept of public work as an alternative to freedom-depriving punishment dates back to the 18th century to the jurist "Beccaria," then widely spread in contemporary penal legislations, first adopted by the United States in 1970, then moved to England in 1972, and in France, it was established under Law No. 83-446 dated June 10, 1983. See: Mohamed Saghir Saadaoui, "Public Work Penalty," Dar Al-Khaldounia, Algeria, 2013, p. 92.
- (31)- Fahd Yousef Al-Kasasbeh, "The Function of Punishment and Its Role in Reform and Rehabilitation," First Edition, Dar Wael, 2010, p. 295.
- (32)- Law No. 09-01 dated 29 Safar 1430 AH corresponding to 25 February 2009, Amending and Supplementing Order 66/156 on the Penal Code, Official Gazette No. 15.
- (33)- Mahmoud Taha Jalal, Ibid., p. 330.
- (34)- Mahmoud Taha Jalal, Ibid., p. 329.
- (35)- Abdelmalik Sayeh, "Deferred Sentence System as an Alternative to Short-term Imprisonment," Alternatives to Punishment: A Doctrinal and Comparative Study, National Research Project titled "Rationalizing Criminal Policy in Algeria towards Alternatives to Punishment," First Edition, Modern Institution for Book, Lebanon, 2015, p. 207.
- (36)- Rashid Ben Friha, Ibid., p. 352.
- (37)- Mahmoud Taha Jalal, Ibid., p. 334.
- (38)- Khaled Hassani, "Electronic Monitoring System in Modern Penal Systems," Alternatives to Punishment: A Doctrinal and Comparative Study, National Research Project titled "Rationalizing Criminal Policy in Algeria towards Alternatives to Punishment," First Edition, Modern Institution for Book, Lebanon, 2015, p. 244.
- (39)- Khaled Hassani, Ibid., p. 250.
- (40)- Mahmoud Taha Jalal, Ibid., p. 339.
- (41)- The administrative sanction is a penalty of a punitive nature imposed by independent or non-independent administrative authorities while exercising their public authority towards individuals regardless of their functional identity, primarily for violating certain laws and regulations. See for this definition: Amin Mustafa Mohamed, "The General Theory of Administrative Penal Law," Dar Al-Jamea Al-Jadeeda for Publishing, Alexandria, 2008, p. 227.

(42)- A significant debate arose regarding the constitutionality of this type of penalties, with some arguing against their constitutionality due to their interference with the principle of separation of powers. However, the French Constitutional Council confirmed otherwise, stating that: "Neither the principle of separation of powers nor any other constitutional principle presents an obstacle to recognizing the administrative authority's power to impose sanctions, acting within its public authority privileges, provided that: 1- These sanctions are not freedom-depriving. 2- The exercise of sanction power is accompanied by guarantees ensuring the protection of constitutionally guaranteed rights and freedoms. For more details, see: Faisal Naseegh, "Control over General Administrative Sanctions in the Algerian Legal System," Doctoral Thesis in Public Law, Mohamed Khider University, Biskra, 2012-2013, pp. 56-60.

(43)- Mahmoud Taha Jalal, Ibid., p. 339.

(44)- Mohamed Saghir Saadaoui, Ibid., p. 86.

(45)- Amin Mustafa Mohamed, Ibid., p. 227.

(46)- Faisal Naseegh, Ibid., p. 61.

(47)- Mahmoud Taha Jalal, Ibid., p. 346.

(48)- Order 03-03 dated 19 Jumada Al-Awwal 1424 AH corresponding to 19 July 2003 on Competition, Official Gazette No. 43, approved by Parliament under Law No. 03-12 dated 29 Sha'ban 1424 AH corresponding to 25 October 2003, Official Gazette No. 64, 2003.

(49)- Law No. 08-12 dated 21 Jumada Al-Awwal 1429 AH corresponding to 25 June 2008, Amending and Supplementing Order 03-03 on Competition, Official Gazette No. 36.

(50)- Law No. 15-04 dated 11 Rabi' Al-Thani 1436 AH corresponding to 1 February 2015, Setting the General Rules Related to Electronic Signing and Certification, Official Gazette No. 06.

(51)- Aboud Al-Sarraj, "White-Collar Crime," Journal of Law and Sharia, Kuwait, Year 1, Issue 2, June 1977, p. 127.

(52)- Mohamed Saad Fouda, "The General Theory of Administrative Penalties," Dar Al-Jamea Al-Jadeeda, Alexandria, 2010, p. 136.

(53)- Law No. 11-04 dated 14 Rabi' Al-Awwal 1432 AH corresponding to 17 February 2011, Defining the Rules Regulating Real Estate Promotion Activity, Official Gazette No. 14.

(54)- Faisal Naseegh, Ibid., p. 79.

(55)- Law No. 04-02 dated 05 Jumada Al-Awwal 1425 AH corresponding to 23 June 2004, Defining the Rules Applicable to Commercial Practices, Official Gazette No. 41.