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THE LEGAL NATURE OF THE VIOLATIONS

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ABSTRACT

This study aims to understand the nature of the offenses from the perspective of jurisprudence; By explaining the foundations of jurisprudence trends about the nature of the violations, and the criticisms directed against them, and highlighting the foundations of modern criminal policy in determining the nature of the violations, the study used a mixed methodology of descriptive, analytical, and comparative approach; To reach multiple conclusions, the most prominent of which is the division of comparative jurisprudence toward the nature of violations; One view is of an administrative nature, another view is of a criminal nature, and the doctrinal trend of the administrative nature of the infractions has been more conciliatory in the arguments, which is supported by the position of modern criminal policy; Based on the phenomena of reduced criminalization and reduced punishment; The legislative policy of States with regard to the nature of the offenses is not uniform and fixed, but relative; They differ from one country to another; The philosophy of the State, its political, economic and social environment, and the policy of the State itself may change from time to time; Unlawful conduct may be considered a general administrative offense, and its perception may have changed at another time; It is regarded as a minor criminal offense, and the study paves the way for future research on the adoption of an independent legal system for general administrative offenses and the establishment of a general theory of wrongdoing.

INTRODUCTION

Violation is Unlawful conduct. It poses a threat to society and has a wide scope in the economic and social spheres. Due to the rapid development of these areas, the jurisprudence agrees that violations are less serious than crimes classified as criminal.

The infractions are a violation of interests protected by law, but the interests protected are not of the same degree; it is recognized that irregularities do not affect fundamental or fundamental interests but complementary or secondary interests.

The violation is defined as Conduct that violates a reinforced pillar of a primary pillar of social existence and is complementary to it and attached to it, which entails a legal sanction,[1] and is defined by some of the jurisprudence as acts that occur mostly without mischief, and usually do not cause any harm[2] and another side considers that acts or omissions that are not against public morality and do not dominate the ordinary sense of justice but that the State believes should be prohibited to maintain good order, honesty and hygiene by strengthening its orders with a penal penalty, the perpetrators must not be placed among the criminals; They lack a social orientation, not a moral one.[3]

Based on the above, the legal affiliation of the infractions was a matter of doctrinal dispute, different from their nature, whether they constitute a type of criminal offence, whether the perpetrator is punished with a criminal penalty or not, and whether they constitute a general administrative offence; The perpetrator shall be subject to a general administrative penalty. Each doctrinal trend was pursued based on arguments and justifications, which he believes reinforces his point of view. This was followed by an attitude of modern criminal policy toward the nature of offences. It is based on two doctrinal phenomena, the reduction of criminalization and the reduction of punishment, based on scientific and practical reasons and justifications.

Before proceeding to the subject of our research, marked by the comparative position of jurisprudence on the nature of the violations, we explain the elements of the introduction as follows:

First, the importance of the study:

The subject of violations is one of the most important legal topics that have a legal and legislative resonance, the nature of which is the central pillar in determining the legal affiliation of violations, which will help to establish a general theory of violations; the importance of research is highlighted in two respects:

- The scientific aspect is taking a note of the doctrinal position on the nature of the violations and the arguments and justifications of each doctrinal trend, whether in favour of their criminal nature or of their administrative nature, in addition to the position of modern criminal policy based on the phenomena of reducing criminalization and limiting punishment, and the consequences of such attitudes; It defines the legal framework to which it belongs and affects the nature of the sanctions that may be imposed on the perpetrators.
- The practical aspect is the commitment of the competent authority in practice to adjudicate disputes of violations and seek practical mechanisms to reduce the burden on the competent judiciary, which is already overburdened with cases, to reduce the inflation of criminal legislation.

Second, the study problem:

The difference in the nature of the violations mean the difference in their effects, in particular, the sanctions they entail. This means the inability to establish a general theory of wrongdoing. The modern criminal policy has, therefore, adopted a central position in determining its nature, contributing to resolving the backlog of cases before the competent judiciary and reducing the inflation of criminal legislation. So, the problem of the research lies in the main question: what are the reasons for the difference in the position of comparative jurisprudence from the nature of the violations? It is divided into the following questions:

1 Behnam, Ramses. (1977). Criminalization Theory in Criminal Law – Standard on the Power of Punishment in Law and Practice. (2nd Edition.). Alexandria: Knowledge Foundation. p. 31.

2 Abdul Malik, Jundi. (N.D). Criminal Encyclopedia. Part III. (2nd Edition.). Beirut: Dar al Alam for All. p. 16.

3 Garrow, Rene. (2003). Encyclopedia of Public and Private Penal Law. Volume I, Investigation: Lin Salah Matar. Volume I. (1st Edition.). Beirut-Lebanon: Halabi Human Rights Publications. p. 51.

- What are the principles on which the doctrinal trend in support of the nature of administrative violations has been adopted? What criticism is directed at it?
- What are the principles on which the legal trend in support of the nature of criminal offences has been based? What criticism is directed at it?
- How did modern criminal policy define its position on the nature of the offences?

Third, objectives of the study:

- Understand the nature of violations from a comparative doctrinal perspective.
- Statement of the foundations of doctrinal trends on the nature of violations, analysis and evaluation.
- Highlight the foundations of modern criminal policy in determining the nature of offences.

Fourth, methodology of the study:

The study adopted a mixed methodology of descriptive, analytical, and comparative approaches, mentioning the opinions and statements of comparative jurisprudence in violations, analysis, and discussion.

1. THE POSITION OF TRADITIONAL CRIMINAL JURISPRUDENCE ON THE NATURE OF VIOLATIONS

There has been a dispute over the nature of the offences. Their definitions differed; Some of them were perceived as administrative offences, that is, they belonged to administrative law, and some of them were considered criminal offences, that is, they belonged to criminal law, including each direction had its own reasons and reasons. This is what we address in the doctrinal position in support of the administrative nature of violations (the first requirement) and the doctrinal position in support of the criminal nature of violations (the second requirement).

1.1. The doctrinal position in support of the administrative nature of violations

A trend in jurisprudence is to deny the status of crime over offences; Thus, it was removed from the scope of criminal law and only attached to administrative law, which was pioneered by German jurists. He was the first to set the boundaries between crimes and general administrative violations, and this trend appeared at the end of the 18th century. And is believed that there are crimes that are not of a criminal nature in the sense of understanding in the Penal Code,[4] says the Italian jurist (Zanubini) explaining the doctrinal position of this trend: "While the distinction between offences and misdemeanours was discussed by criminal law scholars in Italy and France, German criminal law and administrative law scholars were looking at the separation of misdemeanours or criminal offences from tax offences and, in general, administrative offences".[5]

This statement confirms the role played by German jurisprudence, as well as the Italian jurisprudence that was influenced by it. The Administrative Violations Law was issued in Germany, and the Administrative Penal Code was issued in Italy. They emphasized the administrative nature of violations, and regulated the provisions of those violations, far from the general penal code.

1.1.1. The foundations of the jurisprudential trend in support of the administrative nature of violations

German jurists were the pioneers of this trend, but they differed in determining the basis on which they drew the distinction between public administrative offenses and crimes, as follows[6]:

First, the violation of the idea of natural law:

(Lutz and Feuerbach) consider their establishment based on the idea of natural law. The offence is criminal in nature based on the point of view when it constitutes a violation of natural law and positive law, and this is not the case in general administrative offences which violate the positive sub-natural law. Therefore, public administrative offences do not fall under the category of natural offences since they are organized (artificial) offences of the legislature. Thus, criminal, and social research is not a concern; it is in-

4 Al-Shara'a, Taleb Noor. (2007). Tax Crime. (1st Edition). Amman: Wael Publishing and Distribution House. p. 33.

5 ibid. p. 33.

6 Sorour, Ahmed Fathi. (1990). Tax crimes. (1st Edition). Cairo: Arab Renaissance House. pp. 42-44.

tended only for the interests of the state.

Second, violation is not a crime of injury:

The German jurist (Goldschmidt) considers an infraction not a crime of injury. The offence is not committed by positive acts affecting the basic components of society and is a crime of failure to enable the administration to perform its duty properly. Therefore, they are often committed by negative behaviour about participating in good governance; That is, whoever violates a legal rule of an administrative nature is contrary to the administrative obligation in the face of the administration and is not a criminal in a sense understood to the criminal law, and the violations on this basis are only administrative crimes, which was expressed by the German jurist (Bandung) saying: that the criminal offence is a violation of personal legal interest, whereas the offence is considered only disobedience or disobeying an administrative order; They are merely a conduct contrary to a peremptory norm of law.

Third, they agree with the rules of civilization:

Max Mayo holds that the rules of civilization, which are, in fact, moral rules, constitute the civilizational responsibility of the people, and therefore, they adhere to them. If they are in accordance with the legal rules, which May did not prepare, they are addressed to the citizens, and therefore, they are not obliged to act upon them. If they are addressed from the street to the competent bodies, then they belong to the criminal law, and if they do not agree, which is the case with the violations, then they are considered an administrative offence, subject to the provisions of the administrative penal code.

Fourth, the historical basis of the nature of administrative violations:

In Roman law, the question of adjudication of offences was left to the administrative authority.[7] The theory of irregularities is based on a purely historical basis; Roman law referred penalties for police offences to be applied directly by judicial officers acting as police officers; Violations are committed directly to judicial officers who perform police functions, and the same is applicable under German law. Penalties for violations were issued by an administrative authority.[8]

Fifth, criminalization tendency because of crises and wars, simplification of procedures:

The tendency, owing to crises and wars, to criminalize many acts and omissions was previously permitted and did not in themselves signify criminal danger. This has resulted in an increase in crime and has led to duplication in the Penal Code, where the administration tracks the violator, tries him, and executes what it sentences, and the supporters of this system see it as a simplification of procedures and a reduction of the judicial authority in crimes of little harm or danger so that they do not deserve the guarantees prescribed for crimes and misdemeanours.[9]

Sixth, the difference of violations from crimes in the type of interest and in the moral element:

This trend is justified by the fact that offences are not crimes. German jurists argue that there are two fundamental differences between a public administrative offence and a criminal offence: first, the offence is not an assault on a public interest or a community interest; they are merely a departure from the system or a lack of obedience to it, or they are merely the cause of administrative harm, or the second difference appears in the moral element. In a criminal offence, wilful or negligent action is required, while in general administrative offence, error is often assumed.[10]

1.1.2. Criticism of the grounds of the administrative nature of the violations

Some of the supporters of this trend are those who reserve by saying that[11] the distinction between crime and a public administrative violation will remain complicated, as some believe that in most

7 Ahmad Fathi Sorour. Ibid. p. 45. And Abbas, Mohamed Ibrahim Khdeir. (2021). Obstacles to Liability in Tax Crimes. PhD thesis. Faculty of Law. Islamic University. Lebanon. p. 100.

8 Nasreddine, Sharafawi. (2021). The Peculiarities of Tax Crime. PhD thesis. Faculty of Law. University of Algiers 1-Ben Sousf Ben Khada. Algeria. p. 57.

9 Mostafa, Mahmoud Mahmoud. (1983). Commentary on the Penal Code – General Section (10th Edition). Cairo: Cairo University Press. P. 31 and Abdel Zaher, Ahmed. (2011). Special Criminal laws – General Theory. Book I (1st Edition). Cairo: Dar Al-Nahda. P.274.

10 Mustafa, Mahmoud Mahmoud. Ibid. pp. 31-32.

11 Mustafa, Mahmoud Mahmoud. (1979). Economic Crimes in Comparative Law. Part I – General Provisions and Criminal Procedure. (2nd Edition.). Cairo: Cairo University Press and University Book. p. 65.

cases, the act of the perpetrator can be described as a criminal offence and a general administrative violation together, except for the act which the Penal Code provides for criminalization, such as embezzlement and falsification of official documents, betraying the officials of the economic administration, tampering with the supply of the state, and only practical application will show in the future the validity or invalidity of the legislative experiment.

Despite this trend, it has been criticized. Most notably, the historical basis was abandoned by the advent of the French Revolution. General administrative offences and sanctions have been incorporated into the Penal Code in accordance with the principle of no crime and no penalty except by provision. Thus, the determination of the nature of the offence does not rely on historical precedents but rather takes place through the system of positive law. Therefore, public administrative offences have become criminal since the time they were incorporated into the Penal Code,[12] and not all public administrative offenses are passive offenses, some of which are also positive, and are attested in several texts, in addition to the arguments put forward by supporters of the trend in favour of the criminal nature of the offenses.

It can be said that this trend suggests that offences are administrative, not criminal offences and that they are replaced by administrative law, not criminal law; this is why the people who are in this direction have shown themselves. This is reflected in some comparative legislation, which introduced the dual system of the Penal Code. The Penal Code is limited to felonies and misdemeanours, while the offences are in an independent group called the Administrative Penal Code.[13] As in Italy, it is regulated in what can be called the Code of Administrative Offences, as in Germany.

1.2. The doctrinal position in support of the criminal nature of the violations

Proponents of this trend believe that offences should be kept under criminal law and that a branch of the ordinary Penal Code cannot be recognized. It is a unit of all the offences; it contains felonies, misdemeanours, and offences to which the same provisions, both material and formal,[14] are generally applicable, but it recognizes that they are minor offences. We address the foundations of this trend in favour of the criminal nature of the infractions (section I) and the criticisms levelled against it (section II).

1.2.1. The foundations of the jurisprudential trend in support of the criminal nature of the violations

The proponents of this doctrinal trend are many, especially in France, on several bases, place offences within the scope of the Criminal Code. To sum them up:

First, the sharing of the character of moral sin:

The common nature of offences with felonies and misdemeanors is a moral sin, and they add that the rule's susceptibility to change or inconsistency is not limited to offences alone, but every rule of law is subject to it.[15]

Second, commitment to the principle of separation of powers:

This trend finds that the administration is entrusted with a share of the judiciary, contrary to the principle of separation of powers. The administration then combines the qualities of the adversary and the judge, and the staff of the administration lack the necessary training for the judiciary, which allows the matter to be brought to justice after the administration has been empowered to adjudicate such offences. This leads to complexity and prolongation of the proceedings, in addition to the fact that the rules for distinguishing between criminal offences and public administrative offences are vague and lack the required clarity in criminalization and punishment, which is inconsistent with the principle of legality. According to this principle, individuals must be able to be informed in advance of the penalties to which they are subjected if they commit an act or omission, and it is impossible for the perpetrator to know in accordance with such controls the type of offence he commits.[16]

12 Al-Shara'a, Taleb Noor. Ibid. p. 39.
13 Abdel-Zaher, Ahmed. op. cit. p. 270.
14 Mostafa, Mahmoud. Economic crimes in Comparative Law. op. cit. p. 62.
15 Abdel-Zaher, Ahmed. op. cit. p. 275.
16 Mostafa, Mahmoud. Economic crimes in Comparative Law. op. cit. pp. 63-64.

Third, the agreement of violations with the crimes of the elements, the scope of application and the reasons for permissibility:

Offences contain all the general elements of the offence,[17] and the scope of application of the Criminal Code in terms of time and location applies to offenses, as well as the grounds for permissibility, when the conditions are met; because they are general reasons, they do not relate to a particular crime.[18]

Fourth, preserving the integrity of the Penal Code:

The logic is consistent with the logic that the interests protected by the Administrative Penal Code relate to administrative law, not to the Penal Code. The rules of the Penal Code are dispersed and distributed to other branches of the law. Punitive rules relating to trade or industry become branches of law called the Commercial Penal Code or the Industrial Penal Code, and these results are unacceptable; they destroy the integrity and substance of the Penal Code.[19]

Proponents of this trend have coined the term special penal codes, which are meant to include the range of offences that have a certain legal independence under which the administrative penal code is incorporated, and the criterion of such independence has been questioned. Some went on to introduce the criterion of legislative independence, that is, the existence of a certain set of offences in legislation separate from the Penal Code, such as the Traffic Act, while others have considered the interest that the legislation aims to protect. Thus, material interests are protected by the Financial Penal Code, and economic interests are protected by the Economic Penal Code, thus, it is likely from the jurisprudence that the independence of the Special Penal Code does not mean its complete separation from the General Penal Code. However, the general provisions of the Act remain the principal to be referred to whenever the special Penal Code is deficient or deficient.[20]

1.2.2. Criticism of the grounds supporting the criminal nature of the infractions

Although the criminal nature of the offences is defended and maintained in the framework of the tripartite division of the offence, it is governed by the Criminal Code; there are those who believe that some laws should include administrative and disciplinary sanctions for those who violate certain administrative provisions; in such cases, the legislator considers that the offence is a minor offence and does not deserve to be considered a criminal offence.[21] This statement acknowledges general administrative offences; no justification for him.

In addition, offences are distinct from offences and misdemeanours in many legal provisions. Whether the substantive provisions or the procedural provisions, for example, in the origin of the violations are unintentional crimes, some jurisprudence even holds that the violations are material crimes, and if the trend is not to believe that the violations are material crimes, stressing that "there is no crime without a moral element". The difference between offences and offences and misdemeanours remains clear regarding the form of the moral element, and the offences, due to their insignificance, are not recorded in the criminal record or the criminal record, the system of rehabilitation does not apply to them, and there is no need to apply it to them.[22]

In this discussion, we conclude by discussing the grounds for both directions and the criticisms directed against them. The trend of administrative nature was successful in its arguments, and although there were some observations, they were not substantive, as was the trend of the criminal nature of the infractions. What has been said is the abandonment of the historical basis of the administrative nature of irregularities after the French Revolution. It does not mean that the nature of administrative offences is extinguished. As practical as it has been, the principle of separation of powers has been rigidly applied. France has since recognized the nature of administrative offences, which are met with general administrative sanc-

17 Al-Shara'a, Taleb Noor. Ibid. p. 43.

18 Ibid. pp. 44-45.

19 Abdel Basseer, Issam. (2009). Afifi Hussein Penal texts in non-criminal laws toward a new criminal policy – a fundamental analytical study. Cairo: Dar Al-Nahda Al-Arabia. p. 42 and later.

20 Abu khutwa, Ahmed Shawqi Omar. (N.D). Explanation of the General provisions of the Penal Code. Cairo: Dar Al-Nahda Al-Arabia. p. 15.

21 Mostafa, Mahmoud. Economic crimes in Comparative Law. op. cit. p. 67.

22 Abdel-Zaher. Ahmed. Ibid. pp. 278-279.

tions, and the principle of separation of powers has not been violated but has been applied flexibly. Cooperation between the authorities, the relationship of cooperation between the judiciary and the executive branch, and the statement that there is an agreement in many provisions between offences and offences. The offence must be covered by the Criminal Code. So the statement is not correct; where there is a fundamental difference, especially in the type of interest protected and the moral element, even if recognized. Why are disciplinary offences not included as a criminal offence? It contains the same elements of a criminal offence, not to mention the recognition by supporters of the trend of the criminal nature of the infractions; there are minor offences that are sanctioned by a general administrative penalty.

The researcher believes that the Code of Administrative Offences, or the Administrative Penal Code, is not a special criminal law and is not a matter of distribution and dispersion of the Penal Code, as the proponents of the criminal nature of the violations say. Being a law that has its own autonomy from criminal law, even if it is taken from its general provisions. It is well known that administrative law is still evolving, and its rules are not complete. The penalty is administrative rather than judicial, which is the most obvious response to this trend, and public administrative offences are often determined by the executive rather than the legislature, as authorized by the latter, in cooperation between the authorities and in the public interest.

2. THE POSITION OF MODERN CRIMINAL POLICY ON THE NATURE OF VIOLATIONS

Legal disputes concerning the nature of the offences needed a review to meet the changes in the world. The modern criminal policy has, therefore, taken a position on the nature of the offences. Based on these variables, criminal policy refers to the main ideas that guide the law in its establishment and application. The directive at the establishment stage is directed only to the legislator, while at the implementation stage, it is directed to the judge and other bodies responsible for implementing the law.[23]

While it is recognized that the Criminal Code plays an active role in preserving society and its values and combating crime through criminal punishment, its involvement has increased in many areas. The expansion of the role of the State and its interference in many aspects of life.

This is in the context of the economic, social, and political changes that the world has witnessed, especially after world wars and economic crises. As the State's means of combating crime, however, this has led to the excessive use of criminal penalties and the excessive use of punitive weapons for acts that were not as threatening and dangerous by criminalizing them and the punishment being disproportionate to the offence. This, in turn, has led to an increase in criminal legislation, and the rights and freedoms of individuals are threatened because the excessive criminalization of the punishment of breaches of obligations is aimed solely at an organizational, economic, or political purpose. It is considered an unwise use of criminal law, which undermines the absolute sharpness of the sword of punishment and turns this law into a mere instrument of terror.[24]

Criminal jurisprudence has therefore advocated a reduction in criminal law policy, As it is not the only means of dealing with unlawful acts but the last means, and according to criminal justice, non-criminal laws are responsible for dealing with less serious violations,[25] and the criminal law also performs part of the function of the law in protecting interests, but it plays a different role than others.[26] Which means diversity of interests; The existence of a minimum level of public interest in Hick's view, justifies the legislator's intervention to issue a legal regulation, but if that interest ceases to exist; It negates the legal and logical justification for the enactment of legislation;[27] Thus, the

23 Sorour, Ahmed Fathi. (1972). Origins of Criminal Policy. Cairo: Dar Al Nahda Al Arabia. p. 10.

24 Behnam, Ramses. op. cit. p. 14.

25 Abdullah, Firas Abdel Moneim. (2019). Criminal Law and its need for Philosophy. Journal of Legal Sciences. University of Baghdad. (2). p. 82.

26 Khalifa, Ahmed Mohamed. (1959). General Theory of Criminalization: A Study in the Philosophy of Criminal Law. (1st Edition). Egypt: Dar Al-Maarif. p. 110.

27 Azar, Adel. (1972). Concept of Legal interest. National Criminal. Journal. Egypt: National Center for Social and Criminal Research. (3). pp. 396-397.

intervention of the legislation in the promulgation of a new legal regulation outside the Criminal Code was justified; not at the minimum, but the existence of public interest at its highest, in the regulation of public administrative violations.

The attitude of modern criminal policy toward determining the nature of offences was based on the phenomenon of reducing criminalization and the phenomenon of reducing punishment, and the Bellagio Conference held in Italy in 1973 was the first conference to seriously consider its study.[28] Therefore, we address this position through the phenomenon of reducing criminalization (the first requirement) and the phenomenon of reducing punishment (the second requirement).

2.1. The phenomenon of limiting criminalization

The reduction of criminalization is one of the two parts of the jurisprudential basis that contributed to highlighting the nature of the violations and making the transition from criminal law to administrative law in both parts: the shift from criminal crime to general administrative offence and the shift from a criminal penalty to general administrative punishment, and the reduction of criminalization, or also called the policy of non-criminalization, or apostasy from criminalization, finds its roots in the ideas of the social defense movement.[29]

The development of the world, especially in the economic field, demonstrated artificial unlawful acts, which were countered by the Criminal Code, which is the most powerful barrier for protecting interests, but which went beyond the scope of excessive criminalization. This has led to an unjustified widening of the scope of criminalization and has resulted in an increase in criminal legislation. Jurisprudence has been heard at international conferences, and its call for the reduction of criminalization is followed by the same call at national levels. Thus, the limitation of criminalization is, in fact, one of the terms devised by the jurisprudence, and its grounds can be rooted in two principles: Necessity and interest, on the one hand, and balance and proportionality, on the other.[30] We explain the definition of limitation of criminalization (section I) and the nature, standard and types of limitation of criminalization (section II).

2.1.1. Definition of limitation of Criminalization

The jurisprudence did not agree on a definition of limiting criminalization; it is described in several pictures as follows:[31]

- In comparison with the reduction of punishment, it is defined as the measure that aims to abolish the application of the criminal penalty, while the reduction of punishment – is the complete abolition of any penalty of any kind.
- Image two: some define it as stripping crime of its criminal character, without abolishing the penalty that can restrict the rights of individuals.
- Image three: The Belgian Criminal Code Review Commission of 1979 defined it as decriminalization.
- Image four: defined as decriminalization and, consequently, abolition of punishment as well.
- Fifth Image: it is defined in Arab jurisprudence as decriminalizing a particular act in a way that leads to legal recognition of the legality of this act, so that it is not subject to any kind of sanctions.
- Finally, there are those who define it, after criticizing the previous definitions, as the abolition of the legal existence of the criminal rule, by both, in a way that leads to the decriminalization of the behaviour, and thus the recognition of its legitimacy, and the possibility of continuing to subject it to another non-criminal legal rule. This is for reasons based on considerations of appropriateness dictated by criminal policy.

28 Mohamed, Amin Mostafa. (2017). General Theory of Administrative Penal Law – the phenomenon of limiting Punishment. Alexandria: University Press House. p. 20.

29 Ben Jiddo, Amal. (2018). Reduction of Criminalization and Punishment in contemporary Criminal Politics. Journal of Legal Studies and Research, Algeria: Faculty of Law and political Science, Mohamed Boudiaf University of Balsila. (10). p. 189.

30 Jalal, Mahmoud Taha. (2004). Origins of Criminalization and Punishment in contemporary Criminal Politics "Comparative Study". PhD thesis. Faculty of Law. Ain Shams University. p. 268.

31 Jalal, Mahmoud Taha. Ibid. pp. 246-251.

- From the previous definitions; we find that the jurisprudence has different views reflecting its position on limiting criminalization, which has been criticized by some because of its confusion with the concept of limiting punishment, its insignificance, or its overextension of its legitimacy.

The researcher considers that the most correct definition is the last one; that the act was decriminalized, followed by the abolition of the criminal penalty, and not only did it, but decided that it could be subject to administrative or other legal rules. This definition, however, deals with acts that exist and are criminalized in the Criminal Code, or are criminally unlawful. This means that it is not used for unlawful acts, may be updated according to changes in various areas of life, especially economics. They are originally born into non-criminal legal rules.

It is worth noting; It is preferable not to use the term crime; After the act is a criminal offence, or a new fabrication, and if some attribute it and restrict it according to the legal rule governing it, it is said that it is an administrative offense, but it is preferable to use the term general administrative offence. It reflects freedom from criminal law completely and shows the extent to which it is independent of it, and subject to administrative law.

2.1.2. Nature, standard and types of limitation of criminalization

It is necessary to disclose the nature and standard of limitation of criminalization, and to indicate the types thereof; it is possible to understand the position of modern criminal policy on the nature of the offenses, these are as follows:

First, the nature of limiting criminalization:

The reduction of criminalization is of a purely objective nature, which in turn has important consequences; it can be summed up that decriminalized conduct becomes lawful. This makes it ineligible for criminal participation, whether the contributor is an actor or a partner, ignorance is also a limitation of criminalization. Any belief by the perpetrator, contrary to reality, that his act is punishable by law does not negate the legality of his act,[32] nor does the limitation of criminalization mix with any personal elements. It is the result of circumstances and considerations dictated by the nature of the interest being protected, and the amount of damage or threat to values and interests involved in the conduct.[33]

Second, the criterion of limiting criminalization:

This criterion is achieved by the lack of two important principles, necessity, and proportionality in conduct, as an offense against interests has not been criminalized, due, inter alia, to the insignificance of the attack which does not amount to harm or threat of danger, or because the conduct does not involve harm or danger in the first place. The last reason lies in the ability of other non-criminal means to defend and secure the interests that deserve protection, and to restore the balance that was disturbed by that attack.[34]

Third, the types of limiting criminalization:

For reducing criminalization, there are two methods: the first – Absolute; This category requires that the conduct that has become lawful affects a single legal interest protected by criminal rules, and that, as a result, criminal permissibility will apply to other branches of law. The second type is relative – it is achieved by making the act criminal only, while it remains illegal for other branches of the law. The reason lies in the fact that the assault subject to criminal permissibility has affected numerous legal interests belonging to other branches of law.[35] So the second type; It is what achieves the administrative nature of violations.

It should be noted that the limitation of criminalization and the permissibility of conduct is either by the legislative authority competent to enact the law, or by the judiciary. When the competent court has ruled that a particular legal provision is unconstitutional or takes the form of a general amnesty. It is an act exclusively within the competence of the legislator, which results in retroactive decriminalization.[36]

32 Jalal, Mahmoud Taha. op. cit. p. 252.

33 Ibid. p. 253.

34 Sorour, Ahmed Fathi. (2001). Constitutional Criminal Law. (1st Edition). Cairo: Dar Al-Shorouk. p. 161.

35 Al-Shammari, Maali Hamid Saud. (2019). The phenomenon of fragmentation of penal texts in contemporary criminal politics. PhD thesis. Faculty of Law. Al-Nahrain University. Iraq. p. 211 and Salem, Omar. (1997). Towards the Facilitation of Criminal proceedings (comparative study). (1st Edition). Cairo: Dar Al-Nahda Al-Arabiya. p. 93.

36 Al-Shammari, Maali Hamid Saud. Ibid. pp. 211-212.

2.2. The phenomenon of limiting punishment

The reduction of punishment is the other part of the doctrinal basis that has contributed to highlighting the nature of offenses and to making the transition from criminal law to administrative law in both parts: from criminal punishment to general administrative punishment, and from criminal offence to general administrative offense. We explain the definition of the limitation of punishment (section I), and the reasons for the emergence of the limitation of punishment, nature and standard of the limitation of punishment (section II).

2.2.1. Definition of limitation of punishment

Several doctrinal definitions of the term limitation of punishment have been provided, collected in the following configuration:[37]

- The first: when the legislator seeks to abolish the criminalization text and fully recognize its legality; That is, the act that was criminalized in the Penal Code has become permissible, clearly, and explicitly, and this image is what the jurisprudence calls the limitation of criminalization.
- The second: when the legislator seeks to maintain the criminalization, but to reduce its severity, any mitigation within the criminal system, by reducing the severity of sentences to reduced sentences, or long sentences to short sentences. The latter, which has caused a great imbalance in the penal system, so that alternatives have been considered to achieve their objectives without their disadvantages, such as a moratorium system, judicial testing, and other alternatives.
- The third: to maintain the criminalization of the act, but to move away from the criminal procedure. Stop criminal prosecution and resort to non-penal procedural options, such as compensation of the victim and work for the public benefit.
- The fourth: a complete shift from criminal law to another legal system. The act becomes permissible does not constitute a crime, but remains illegal under another legal framework, whether civil or administrative, but the more fortunate area is administrative law.
- The fifth: seems to be the closest to logic and the most capable of grasping this concept;[38] that the limitation of punishment is any form of commutation within or outside the criminal system, by shifting from the criminal system to another legal system.

From the previous definitions; The fifth picture is actually closer to logic, but what is consistent with and serves as a basis for determining the nature of the violations; It is the definition of the fourth image; Represented by: transferring the act from the criminal law to another law. Any transformation of the act from a criminal offence into a general administrative offence, and thus the criminal penalty becomes a general administrative penalty. The administrative nature of the offenses can be said to be upheld by modern criminal policy. This term is preferred by the law; In his view, the limitation of punishment is the complete abandonment of the criminal law to punish certain conduct, as such conduct is provided for in another law, such as the Administrative Penal Code, which establishes an administrative penalty for it, although the conduct is decriminalized and is not a criminal offence, it remains illegal. Another legal intervention was needed to establish a penalty to ensure non-infringement, so such renunciation was not a limit to criminalization, as there was no abolition of wrongfulness.[39]

The transition from criminal to administrative law can be said to be the decriminalization of the penalty by referring it to administrative bodies, to impose general administrative sanctions for the wrongful act, which we call general administrative offenses; excluded from the scope of criminal offenses. This means upholding the administrative nature of the irregularities.

37 Khalfi, Abdurrahman. (2021). The transition from criminal to administrative punishment (comparative jurisprudential study). Journal of Sharia and Economics. Faculty of Sharia and Economics. Prince Abdelkader University of Islamic Sciences Constantine. 5 (10). pp. 105-106.

38 Jalal, Mahmoud Taha. op. cit. p. 293.

39 Mohamed, Amin Mostafa. op. cit. p. 47.

2.2.2. Nature and standard of limitation of punishment

The reasons for the emergence of the limitation of punishment:

The policy of reducing punishment is based on the ideas of positivism, which wanted to replace punishment with precautionary measures, and also on the movement of the International Federation of Criminal Law, which necessitated the tolerance of some criminals, especially juveniles, and those who are subject to short-term custodial sentences, who should be subjected to alternatives other than punishment.[40] It inevitably leads to the facilitation of criminal proceedings, limits the many criminal cases that crowd the courtyards, and thus gives them an opportunity to focus on the most important cases.[41]

Reduction of punishment is the result of social, economic, and political changes that the world has experienced. This means that it was not born by chance, but based on a number of reasons and justifications, which are the same that led to the crisis of criminal justice and the crisis of criminal policy in general, and these reasons and justifications at the same time are the reasons and justifications for the transition from criminal crime to public administrative offense. One group of jurisprudence has classified these justifications into two types: legal and factual,[42] and[43] another group has classified them into other two types: substantive and procedural, and another has considered them to be legal security, economic security, and social security.[44] These are all the reasons: criminal legislative inflation, short-term imprisonment, formality, and incapacity of the justice system.

This new doctrinal phenomenon was first addressed at the Sixth Conference of European Ministers of Justice in 1970 and endorsed by modern criminal policy; it is necessary to determine the nature of the violations.

The nature of punishment:

Punishment is of an objective nature, because it is associated with punishment only without the presence of any personal elements,[45] it reflects certain considerations related to the idea of the deprivation of liberty penalty in terms of its purposes and objectives, the extent to which it is capable of achieving these goals or objectives, and the extent to which it can be replaced by other alternatives.[46] In terms of the entity, or in terms of the effects, it is limited to the conduct being punished without the personal factors of the perpetrator.[47]

One of the most important consequences of this nature is that ignorance of it, i.e., the belief – contrary to reality – that it does not exist, does not prevent its application and benefit from it, and the error of it, i.e., the belief – contrary to reality – that its existence does not lead to benefit from it, the reason for both cases. The limitation of punishment is linked to objective causes and purposes that have nothing to do with the personal belief of the perpetrator.[48]

The standard of limiting punishment:

The purpose of punishment is to protect values and interests and to restore the balance that is normally disturbed by the crime. Punishment is therefore linked to the principle of necessity, in other words, punishment is only justified if there is a social interest of some importance, which cannot be adequately protected without criminal punishment, if the social interest is not of such importance, or is of such importance, but it can be protected without criminal punishment. In both cases,[49] there was no need to justify punishment.

In contrast, punishment is linked to the principle of proportionality. That is, the proportionality

40 Salem, Omar. op. cit. p. 100.

41 Nasser, Hamoudi. (2017). The Criminal Justice crisis: A Study in causes and Solutions. Maaref Journal, University of Bouira. Algeria. 12 (22). p. 29.

42 Ben Abdullah, Farid. (2019). Alternatives to punishment in contemporary criminal policy, "Administrative penalty and the penalty of work for public benefit as a model". Journal of Law and political Science. Faculty of Law and political Science. University of Tiaret. Algeria. 5 (2). p. 78.

43 Laaraba, Manal and Al-Ayeb, Samia. (2021). The role of restorative criminal justice in reducing the criminal justice crisis. Academy of Social and Humanitarian Studies. University of Hassiba Ben Bouali Al-Chlef. Algeria.13 (2). p. 333.

44 Al-Arrousi, Mohamed. (2018). Policy of Reduction of Criminalization or impunity. Electronic Journal of Legal Research. Morocco. (2). p. 32.

45 Ben Jiddo, Amal. op. cit. p. 192.

46 Moiza, Redha Ben said. (2016). Rationalizing Criminal Policy in Algeria. PhD thesis. Faculty of Law – said Hamdeen. University of Algiers 1. p. 225.

47 Jalal, Mahmoud Taha. op. cit. p. 296.

48 Ibid. p. 296.

49 Al-Jubouri, Mustafa Taha Jawad. (2020). Proportionality between public and private interest in criminal law. (comparative study). PhD thesis. Alamein Institute for Graduate Studies – Law Department. Iraq. p. 151.

between punishment and crime must be based on sound considerations, to strike a balance between rights and freedoms and the public interest; this is to achieve the objectives of the punishment.[50]

In the light of this limitation, the criterion for limiting punishment is the selection of proportionality; it helps to draw the line between a criminal offense which is subject to a criminal penalty and a general administrative offense which is subject to a general administrative sanction.[51]

It can be said, while there are similarities and convergence between the reduction of criminalization and the reduction of punishment, there are differences. Limiting the criminalization of conduct is the abolition of the criminal rule for the protection of the interest to which it is prejudicial, while limiting the punishment. It is a modification of the part of the penalty contained in the Criminal Code. Any commutation without prejudice to the part of the mandate, or the replacement of the criminal rule as a means of protecting a social interest by a non-criminal rule,[52] this is on the one hand, and on the other hand; In both the absolute and the relative limitation of criminalization, the legislator decides to terminate the existence of the criminal rule for the protection of the particular interest, while in the reduction of the penalty the interest for the criminal protection remains worthy of protection, but the legislator considers that the necessary protection can be secured during the imposition of the penalty, or replaced by a non-criminal penalty.[53] The fundamental difference between them is manifested by the influence of each on the composition of the criminal base.[54] The limitation of criminalization leads to the abolition of the legal existence of the two criminal rules (assignment and punishment), while the reduction of punishment replaces the criminal rule with a non-criminal norm, it may be administrative or other.

It is worth mentioning; that under the administrative penal sanction, the act becomes criminally lawful, but is prohibited by other laws, especially administrative ones. The violator is subject to an administrative penalty, often a fine through the administration, but the right to appeal to the criminal justice system when the violator does not accept the administrative penalty; the administrative system was favoured to avoid the rigors of the criminal law, and to achieve the contemporary objectives of criminal policy, including compensating the damage caused by the crime, and avoiding short-term custodial sentences (especially in the case of offenses)[55] at the same time.

The researcher considers that offenses are the core scope of the application of the policy of reducing criminalization and punishment. Most of these offenses protect complementary interests, as well as their subjectivity in incrimination and punishment by not being subject to the general rules governing felonies and misdemeanours. Some comparative laws have tended to decriminalize violations, considering them merely errors or administrative violations that the administration is competent to track down and impose a penalty on the violator.[56] Thus, both the limitation of criminalization and the limitation of punishment play an effective role in upholding the administrative nature of the offences; its provisions shall be regulated under the rules of administrative law.

Based on the above, that there is no uniform legislative policy on the nature of offences, they differ from one country to another. This is due to the philosophy of the State, its political, economic, and social environment, and that policy is not static, but relative: one State may view infractions as a criminal offense, governed by the rules of criminal law, another as merely a general administrative offence governed by the rules of administrative law, and even State policy changes from time to time. Some behaviours may be considered illegal, general administrative irregularities, the perception of which may have changed at another time, consider them criminal offenses. Germany and Italy have adopted the Code of Offences or Administrative penalties, while France has not, without denying that there have been shifts in the latter's attitude toward establishing the administrative nature of the infractions.

50 Sorour, Ahmed Fathi. Constitutional Criminal Code. op. cit. p. 160.

51 Al-Jubouri, Mustafa Taha Jawad. op. cit. p. 151.

52 Jalal, Mahmoud Taha. op. cit. p. 297.

53 Al-Shammari, Maali Hamid Saud. op. cit. p. 215.

54 Jalal, Mahmoud Taha. op. cit. p. 296.

55 Otani, Safa. (2014). Rationalizing Punishment in contemporary Criminal Politics. Journal of Sharia and Law. Faculty of Law. United Arab Emirates University. 28 (60). p. 138.

56 Nazzal, Dred Walid. (2019). Adjudication of criminal offenses. Master Thesis. Faculty of Law. University of Baghdad. p. 19.

CONCLUSION

After reviewing the position of the comparative jurisprudence divided toward the nature of the violations, and mentioning the foundations on which each doctrinal trend was based, and what and what modern criminal policy saw in that;, the research came to many conclusions and recommendations:

Results

- The study showed the complexity of determining the nature of the offenses, dividing the doctrinal position on the nature of the infractions; a tendency considered to be of an administrative nature. They belong to administrative law and are of a criminal nature, it belongs to the Criminal Code.
- The study clarified the basis of the jurisprudence supporting the administrative nature of the infractions, namely that they do not violate natural law, are not harmful in origin, and are regulatory violations by the legislator, which are of a negative nature. They often consist of refraining from and obeying administrative orders and have a purely historical basis. In the Roman State, it was the administrative authority that imposed the penalty on the offender, and it affected only secondary interests. They are less serious, and indecent in criminalization, because of wars and crises, and the search for simplification of procedures, while the foundations of the jurisprudential trend in support of the criminal nature of violations are that they share with crimes and misdemeanours the character of moral sin, and that the statement by its administrative nature violates the principle of separation of powers, shares with the crime the elements and scope of application and the reasons for permissibility, and maintains the unity of the penal law.
- The study revealed that the doctrinal trend of the administrative nature of the infractions was more successful in the trend of the criminal nature of the infractions, and the criticism against him was not substantive, but often counterproductive. What has been said is the abandonment of the historical basis of the administrative nature of irregularities after the French Revolution. The principle of separation of powers was applied in practice, in particular, since France has since recognized the nature of administrative offences, the principle of the separation of powers has not been violated, and is being applied flexibly. In addition, the principle of separation of powers has not been violated in reality, and the point is that it is applied flexibly. The existence of cooperation between the authorities, especially the judicial and administrative authorities, and the statement that there is agreement in many rulings between violations and crimes. This does not mean that they are of one type; Where disagreement exists, especially regarding the type of interest protected and the moral element; As critics of this trend acknowledged; In the presence of minor offenses, the perpetrator is sanctioned by a general administrative penalty.
- The study confirmed that the law of general administrative violations, or the so-called administrative penal code, is not a special criminal law, and is not a matter of distribution and dispersion of the penal code, as advocates of the criminal nature of the violations say. It is a law that has its own independent character, deriving from the independence of offenses from criminal offenses, even if it is taken from its general provisions. It is well known that administrative law is still evolving, and its rules are not complete. The penalty is administrative rather than judicial, and public administrative offenses are often determined by the executive rather than the legislature, by virtue of the latter's authorization, and in application of the cooperation of the authorities for the public interest.
- The study revealed that the attitude of modern criminal policy in supporting the administrative nature of the infractions, based on reduced criminalization and reduced punishment. Infractions are the core scope of the application of the policy of

reducing criminalization and punishment. Therefore, they are instrumental in upholding the administrative nature of the infractions.

- The study confirmed that the legislative policy of States toward the nature of the infractions is not uniform, not fixed, but relative; they differ from one country to another – different philosophy of the State and its political, economic, and social environment. One State may consider irregularities to be a criminal offense, another to be merely general administrative offenses, and the policy of the State itself may change from time to time, some unlawful conduct may be regarded as general administrative offenses at one time, and its perception may change at another time. They are considered criminal offenses.

Recommendations

- The study recommends further research on the adoption of an independent legal system for public administrative offences, the establishment of a general theory of wrongdoing, as well as the non-use of criminal terminology; the term crime and punishment are used as punishment.
- The study recommends the establishment of controls and restrictions on administrative authorities when they sign general administrative sanctions in the face of public administrative violations, to prevent its abuse and abuse of this power, and preserve the constitutionally guaranteed rights of individuals.
- The study recommends the importance of enhancing public awareness about the administrative nature of irregularities, the role of general administrative sanctions in reducing them quickly and effectively and reducing the backlog of cases before the courts.

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