



The Scope Of Suspending The Implementation Of Financial Penalty In The Crime Of Issuing A Cheque Without Sufficient Funds

Dr. Aghelis Bouzid^{1*}, Pr: Ounnoughi Nabil²

^{1*}Assistant Professor, Department (MCA), Faculty of Law and Political Science, University of Béjaïa/Algeria, Research Laboratory of effective legal rule, Email: bouzid.aghelis@univ-bejaia.dz

²University Center of Barika, Algeria, Email: ounnoughi.nabil@cu-barika.dz

Citation: Dr. Aghelis Bouzid, et al, (2023) The Scope Of Suspending The Implementation Of Financial Penalty In The Crime Of Issuing A Cheque Without Sufficient Funds, *Educational Administration: Theory and Practice*, 29(4), 493-500, Doi: 10.53555/kuey.v29i4.3418

ARTICLE INFO

ABSTRACT

The Algerian legislator is keen on rationalizing the application of penal sanctions, aiming to rehabilitate the offender rather than merely deter them, so that their behavior aligns with societal norms and prevents recidivism.

Legislative policy extends to establishing a system for suspending the execution of the penalty when pronounced by the judiciary as a means of rationalizing its application. This system is subject to specific conditions, including consideration of the nature of the penalty subject to suspension.

The crime of issuing a cheque without sufficient funds is one of the crimes where the system of suspending the penalty prescribed by law may be applied. However, it is noted that in the judgments issued by many judges in Algeria, there is a discrepancy in determining the nature of the penalty prescribed for this crime to the extent that there is disagreement in accepting or rejecting the application of the suspension system to the offender committing this crime.

Keywords: Financial Penalty - Issuing a Cheque Without Funds

Introduction:

The concept of criminal policy of the state revolves around two fundamental issues; the first concerns the interests that should be protected through criminalization and punishment, while the second is related to procedural rules that enable the realization of those interests¹.

The excessive increase in criminalization and punishment texts imposed due to the expansion of the circle of criminal activity is an important indicator of the failure of the state's criminal policy in combating criminal phenomena. Some jurists even argue that this policy itself indirectly contributes to criminality². Consequently, rationalizing modern criminal policy is measured not only by increasing criminalization texts and applying penalties in their traditional form but also by considering effective alternatives to these penalties to achieve a goal devoid of the drawbacks recorded on human values³.

These alternatives have become necessary for rationalizing criminal policy and refining the objectives of criminal law⁴. Their importance in application varies between one crime and another or between one state and another. However, their nature differs according to the nature of the anticipated danger of the criminal act and the degree of political, social, and economic development of the state, which has led to divergence in these alternatives among states. For example, in Algeria, the legislator regulated three types of penalty

¹ Rahmani Mansour, *Criminology and Criminal Policy*, Dar Alaloum, Annaba, 2006, p. 163.

² Al-Kahwaji, Ali Abdul Qadir, *Usul Alami al-Iriman wa al-Aqab*, Mansurat al-Halabi al-Huqawiyya, Beirut, 2002, p. 30.

³ The implication of this argument is that the state's excessive application of punishment is contrary to human values, as it often turns into an assault on rights and freedoms.

⁴ Aghelis Bouzid, *The Conjunction of the Principle of Free Evidence with the Subjective Conviction of the Criminal Judge: A comparative analytical study between Algerian law, Egyptian law and some Arab laws*, Dar Al-Huda, Ain Mellila, 2010, page one.

alternatives, which are limited to community service⁵, conditional release, and the suspension system⁶. In contrast, some other countries have enacted different systems of alternatives that our legislator did not include in the penal system, such as plea bargaining.

Thus, Algerian law allows for the suspension of the penalty through the suspension system and the system of conditional release. The former allows for the prevention of penalty execution before its implementation begins and immediately upon pronouncement, while the latter suspends the penalty while it is being executed⁷.

A criminal judge can only suspend the execution of penalties related to imprisonment and fines classified as original penalties under the concept of Article 5 of the Penal Code. This is because it is not permissible to suspend the execution of complementary penalties and security measures.

Based on this legal principle, we anticipate a difference between jurisprudence and judiciary in Algeria regarding the possibility of suspending the execution of the financial penalty imposed as punishment for committing the offense of issuing a check without sufficient funds. The reason for this is the lack of consensus in determining the specific nature of this penalty to confidently apply the conditions of the provisions of Article 592 of the Code of Criminal Procedure to the financial penalty imposed for conviction of committing this crime stipulated in Article 374/01 of the Penal Code.

Therefore, the question arises about the scope of the authority of the criminal judge to suspend the execution of the financial penalty upon conviction for the offense of issuing a check without sufficient funds according to Article 374/01 of the Penal Code to assess the effectiveness of the suspension method in revitalizing trust and reducing the apparent crimes in the realm of check-related transactions?

To answer this question, our legal analysis extends to examining the legal nature of this fine in check-related crimes in general. If we conclude that this fine cannot be classified as a complementary penalty, security measure, civil, or compensatory fine rather than a penal one, as ruled by the jurisprudence of the Chamber of Misdemeanors and Violations of the Supreme Court, then the suspension system cannot be applied to it. However, if we determine that it can be classified as an original penalty with a penal nature rather than complementary or compensatory, there is no obstacle to applying the suspension system to this penalty to achieve the legislator's objectives towards ensuring presumed trust in check transactions and reducing the occurrence of crimes related to such transactions. This is within a specific methodological framework that we address according to the following division:

First Section: Requirements of the suspension system in light of the legal nature of the financial penalty in the crime of issuing a check without sufficient funds.

Second Section: The judge's authority in activating the suspension system to reduce the crime of issuing a check without sufficient funds.

First Section:

Requirements of the suspension system in light of the legal nature of the financial penalty in the crime of issuing a check without sufficient funds

It is not sufficient to combat criminal phenomena to adhere to what is included in the penal scale of punishments, with penalties set by the legislator and made available to judges in two forms: original penalties and complementary penalties stipulated by Articles 5 and 9 of the Penal Code. Political will aiming to refine crime-fighting methods has introduced other methods that replace traditional penalties upon conviction, such as the suspension system, which requires pronouncement only regarding original penalties, excluding complementary penalties.

This issue sparked intense debate concerning the financial penalty imposed as punishment for committing the offense of issuing a check without sufficient funds⁸. While the Chamber of Misdemeanors and Violations

⁵ This is in application of Articles 5 bis 1 to 5 bis 6 of the Penal Code, promulgated by Decree No. 66/156 of 08/06/1966, JR No. 49, issued on June 11, 1966, amended and supplemented.

⁶ The Algerian legislator introduced the parole system in the first law on the organization of prisons dated 10/02/1972, and adhered to it in the new Law No. 05/04 dated 06/02/2005 on the organization of prisons and the social reintegration of detainees, in Articles 134 to 150 thereof.

The Algerian legislature also included the suspension of execution in the Code of Criminal Procedure, unlike most foreign legislations that stipulate it in the Penal Code, such as the system of reducing and increasing the penalty. Articles 592 to 595 of the Code of Criminal Procedure promulgated by Decree No. 66/155 of 08/06/1966, as amended and supplemented, deal with the suspension of the execution of a sentence.

⁷ Bouskia Ahsan, Al-Wajeez in General Criminal Law, 5th edition, Dar Houma, Algeria, 2007, p. 345.

⁸ It is clear from a review of the provisions of Articles 374 and 375 of the Algerian Penal Code that check offenses are grouped into two categories; the first of which includes crimes that occur in connection with the issuance of a check without paying the balance or cashing it on the face of the guarantee, which in the terminology of the law is a misdemeanor for issuing a check without balance and a misdemeanor for cashing

of the Supreme Court leaned towards the view of not allowing the suspension of this penalty, emphasizing the unique nature of the penalty prescribed for the offense of issuing a check without sufficient funds, a critical jurisprudential trend emerged criticizing this judicial direction based on the principles of the suspension system, which align with the nature of the financial penalty. Thus, its application on such penalties is not contradictory.

First Demand:

The Judiciary's Position in Determining the Legal Nature of the Financial Penalty for the Offense of Issuing a Check Without Sufficient Funds.

The legislator prescribed imprisonment and a financial penalty for conviction of the offense of issuing a check without sufficient funds. According to Article 374 of the Penal Code, the legislator condemns this crime to imprisonment for one to five years and a financial penalty not less than the value of the check or the deficit in funds. While in Article 375 of the law, for forgery and counterfeiting crimes related to the check issuer, the legislator condemns imprisonment for one to ten years and a financial penalty not less than the value of the check or the deficit in funds.

Whether it concerns check issuance crimes or forgery and counterfeiting crimes, no discrepancy is anticipated among judges in determining the legal nature of the financial penalty imposed alongside imprisonment. The Supreme Court's Chamber of Misdemeanors and Violations settled on considering the financial penalty in check-related crimes, especially in the offense of issuing a check without sufficient funds, as a unique punishment in Algerian criminal legislation. Therefore, the judge finds himself bound when pronouncing this penalty during the sentencing alongside imprisonment, as he cannot waive it in favor of imprisonment or alter its predetermined value within the legislative text⁹.

The Supreme Court's jurisprudence concluded that the financial penalty under consideration should be classified as a mandatory complementary penalty that does not accept reductions in value in cases of mitigating circumstances. Thus, the court's jurisprudence determined unfair measures against the criminal judge and the discretionary powers granted by the legislator in determining the appropriate penalty upon conviction, specifying that this fine cannot be reduced, and its execution cannot be suspended¹⁰. This is because the nature of this fine as a mandatory complementary penalty is not affected by the mitigating circumstances or the suspension system provided for in Article 53 of the Penal Code and Article 592 of the Code of Criminal Procedure, respectively¹¹. Additionally, the legislator used the term **"and a financial penalty not less than..."** as an imperative formulation that the judge cannot contravene, and he remains bound to respect its mandatory nature stated in the legislative text¹².

Supporters of the jurisprudential trend favoring the Supreme Court's direction¹³ justified the mandatory complementary nature of the financial penalty in check-related crimes based on the requirements of trust and credit assumed in check transactions. The financial penalty imposed by the legislator remains an effective means that cannot be excluded to ensure these requirements. Therefore, judges cannot exercise their discretionary power to reduce its value, waive it, or suspend its execution. According to this jurisprudence, this does not enable combating the phenomenon of circumventing check transactions, similar to tax and customs fines, which are not executed without being subject to the judge's discretionary power to assess, annul, or suspend them¹⁴.

or endorsing a check on the face of the guarantee, and the second section concerns the crimes of forgery and falsification that affect the check writer.

⁹ Tijani Fateh, "On the financial penalty of the check", Judicial Review, No. 02, 2002, p. 35.

¹⁰ Decision of the Chamber of Misdemeanors and Offenses, Third Section, No. 169072, issued on 14/04/1997, unpublished

- Decision of the Misdemeanors and Offenses Chamber, Third Section, No. 179887, issued on 21/06/1999, unpublished.

- Decision No. 209673, issued on 09/21/1999, unpublished.

For a review of these decisions, see: Bouskia Ahsan, Al-Wajeez in Private Criminal Law: Part I, Crimes against Persons and Crimes against Property, Dar Homa, Algeria, 2010, margin no. 151, p. 354

¹¹ Tijani Fateh, Previous reference., pp. 33-36

¹² Bakhouch Ali, "The check bond and how to apply the provisions of Article 374 of the Penal Code", Judicial Review, No. 1, 2003, p. 86.

¹³ Same reference, pp. 85-89.

-Tijani Fateh, Previous reference. p. 36

¹⁴ Decision of the Chamber of Misdemeanors and Offenses, Third Section, No. 188085, issued on 28/09/1998, Judicial Review, No. 1, 1999, p. 196.

- Decision of the Misdemeanors and Violations Chamber of the Third Section No. 205627, issued on 27/04/1999, Judicial Journal, No. 2, 1999, p. 71

Second Demand:

The Jurisprudential Position in Determining the Legal Nature of the Financial Penalty for the Offense of Issuing a Check Without Sufficient Funds.

The majority of jurisprudence, led by Professor Dr. Ahsen Bouskia, criticized the practical direction adopted by the Supreme Court's jurisprudence, considering the financial penalty stipulated in Article 374 of the Penal Code as a mandatory complementary penalty. This jurisprudential criticism is based on the principle of the absence of the legal text relied upon by the Supreme Court in considering the financial penalty imposed for the offense of issuing a check without sufficient funds as a complementary penalty or security measure. The Penal Code did not stipulate it among the complementary penalties specified in Article 9 or among the security measures specified in Article 19. Rather, it referred to the financial penalty in general terms as a punishment within the original penalties. Additionally, jurisprudence supports its view by the text of Article 5 of the Penal Code, which mentioned the financial penalty as an original punishment for misdemeanor offenses. Thus, the financial penalty imposed for the offense of issuing a check without sufficient funds is considered a punishment, simply an original penalty like other fines stipulated in the Penal Code. The only difference is that the legislator prohibited reducing its value below the value of the check or the deficit in funds, but this prohibition does not change its nature as an original penalty¹⁵.

Furthermore, jurisprudence in its doctrine, which we support, emphasizes that the Supreme Court's consideration of the financial penalty as a mandatory complementary penalty contradicts the correct understanding of Article 374 of the Penal Code. The Algerian legislator did not link the amount of the fine in the offense of issuing a check without sufficient funds to the percentage of the damage represented by the value of the check or the deficit in funds. Instead, it merely set the minimum amount of the fine, leaving it to the discretion of the criminal judge to determine it, even if it exceeds the deficit in funds or the value of the check. Consequently, the penalty's nature remains purely punitive without compensatory aspects, unlike fines imposed by law in customs violations and tax crimes¹⁶.

Moreover, jurisprudence confirms the punitive nature of the financial penalty in check-related crimes based on what the legislator explicitly stated in Article 540 of the Commercial Code¹⁷, allowing the possibility of applying mitigating circumstances to offenses of issuing and accepting checks without sufficient funds. This justifies the validity of suspending this fine according to the provisions of Article 592 of the Code of Criminal Procedure to fulfill the conditions required for applying the suspension system completely¹⁸. However, the judge has discretion in this regard, and it is not obligatory for them to consider these conditions and their availability. This is a discretionary right left to the judge's assessment and conviction regarding the circumstances of the public case and the defendant's personality, without obliging the judge to suspend the defendant's sentence without considering these conditions, as the execution of the penalty is the rule, while suspension of execution is a discretionary measure that requires specific conditions when pronounced¹⁹.

It is permissible for the judge to suspend the execution of the financial penalty imposed as a punishment for convictions related to check offenses, as this penalty is considered an original punishment with a punitive nature, not compensatory. This is established based on the absence of its determination in the legal text according to the percentage of damage resulting from the commission of the crime, and based on the compatibility of the conditions and requirements of the suspension system with the predominant adaptation of the financial penalty in these crimes. Thus, it is imperative to appeal to the Supreme Court to reconsider its unjustified and contradictory jurisprudence, which contradicts the understanding derived from the original penalty and the complementary penalty specified under Article 5 and Article 9 of the Penal Code, respectively. Moreover, its interpretation of the provisions of Article 374, in particular, was narrow and deprived the legislator's purpose of determining penalties for check crimes.

It is permissible for the judge, when the conditions and requirements mentioned in the preceding text are met, to rule on suspending the execution of the financial penalty in the offense of issuing a check without sufficient funds, just like other check-related crimes, considering them as crimes under public law. However, it should be emphasized in this context that this ruling is not obligatory on the judge to consider these conditions and their availability. It does not amount to a tangible right enjoyed by the defendant independent of the discretionary power of the criminal judge. Rather, it is an optional matter left to the judge's assessment and personal conviction regarding the circumstances of the public case and the defendant's personality²⁰. Moreover, the judge is not obligated to cause the defendant not to benefit from the suspension system, as the

¹⁵ Bouskia Ahsan, Al-Wajeez in Private Criminal Law, Previous reference., p. 375

¹⁶ Same reference, p. 357

¹⁷ Ordinance No. 75/59, dated 26/09/1975, containing the Commercial Code, JR No. 101, issued on December 19, 1975, amended and supplemented

¹⁸ Bouskia Ahsan, Al-Wajeez in General Criminal Law, Previous reference., p. 349.

¹⁹ Same reference, pp. 346-348.

- Bouhentala Yassine, The Punitive Value of Custodial Punishment: A Study in Algerian Legislation, Memorandum submitted for the degree of Master in Legal Sciences, specializing in Criminology and Punishment, Faculty of Law and Political Science, University of Batna, 2010-2011, p. 151

²⁰ Bouskia Ahsan, Al-Wajeez in General Criminal Law, Previous reference, p. 349

Supreme Court has ruled that the judge is obliged to cause the suspension when ruling on it, without being obliged to do so in case of rejecting the defendant's request for suspension. This is because the execution of the penalty is the rule, while suspension of execution is a discretionary measure that requires specific conditions when pronounced²¹.

In summary, we acknowledge the validity of the criminal judge's ruling to suspend the execution of the financial penalty imposed as a punishment for convictions related to check offenses. This is based on considering this penalty as an original punitive punishment, not compensatory, due to the absence of its determination in the legal text according to the percentage of damage resulting from the commission of the crime. Additionally, it is based on the absence of contradiction between the conditions and requirements of the suspension system and the predominant adaptation of the financial penalty in these crimes. Therefore, it is necessary to appeal to the Supreme Court to reconsider its unjustified and contradictory jurisprudence, which contradicts the understanding derived from the original penalty and the complementary penalty specified under Article 5 and Article 9 of the Penal Code, respectively. Furthermore, its interpretation of the provisions of Article 374, in particular, was narrow and deprived the legislator's purpose of determining penalties for check crimes.

Second section:

The Authority of the Judge in Implementing the System of Suspending the Execution of Financial Penalties to Reduce the Commission of Issuing Checks Without Sufficient Funds Crimes

If objections to the traditional form of punishment are recognized by many scholars, after they justified that pronouncing the execution of punishment has become a fundamental factor leading to a return to crime, then traditional punishment has become a revealing method of the state's failure in combating criminal phenomena. Consequently, alternative measures introduced by modern legislation, including the "suspension of execution" system, have not yet received a comprehensive evaluation of their effectiveness in curbing crime due to the increasing professionalism of criminals in committing crimes. This has led to apprehension about the potential effects of applying these alternatives, which may not be suitable for the personalities and natures of some criminals, especially regarding serious crimes that may affect the fundamental elements of society and undermine the state's economic system, such as crimes involving checks. While some jurists have warned of the potential dangers of the application of the suspension of execution system in this type of crime, the majority of them have agreed to favor these alternatives and encourage legislative initiatives towards them.

Therefore, scientific curiosity inspires us in the context of this study to question the effectiveness of the system of suspending the execution of financial penalties to reduce the commission of issuing checks without sufficient funds and to instill full confidence in continuing to deal with this type of commercial documents that circulate as cash equivalents in various transactions between individuals?

First Demand:

The Negative Effects of Suspending Financial Penalties in the Crime of Issuing a Bad Check

The text of Article 594 of the Code of Criminal Procedure contains the wording of the warning that the judge must address to the convicted person benefiting from the suspension of execution system. This is to ensure caution about the danger of the stage they are entering after being sentenced to suspension of execution, according to the conditions of Article 592 of the same law. In case a new judgment is issued against them for conviction in crimes of public law, the first punishment provided by the suspension of execution system is applied without being confused with the second punishment, while the penalties of recidivism are applied according to Article 57 of the Penal Code.

Analyzing the text of Article 594 of the Code of Criminal Procedure shows that issuing a judgment for a financial fine with suspension of execution upon conviction in the offense of issuing a bad check leads to this penalty being recorded in the criminal record sheets number 1 and 2, which are submitted to public administrations, unless the testing period specified by five years has expired, in accordance with the provisions of Articles 618, 623, and 630 of the Code of Criminal Procedure. Additionally, this penalty is considered in determining recidivism, and it does not prevent the application of complementary penalties, judicial expenses for the public treasury, and compensation amounts for the civil party²².

Thus, it is noted that the person sentenced to a financial penalty in the offense of issuing a bad check with suspension of execution remains subject to scrutiny during the five-year testing period, under the penalty of

²¹ Decision of the Chamber of Misdemeanors and Offenses of the Third Section No. 136249, issued on 09/09/1996, unpublished. (Referred to: Bouskia Ahsan, The Brief in General Criminal Law, Previous reference., p. 350)

²² Bouskia Ahsan, Al-Wajeez in General Criminal Law, Previous reference., p. 350

harsher punishment if a new judgment of conviction is issued against them in crimes of public law²³. This period begins on the day the judgment of conviction in check crimes becomes final, after the expiration of the Public Prosecutor's appeal period. Therefore, the legislator has assessed the danger of the effects of suspending the execution of the penalty when he mandated the judge in Article 594 of the Code of Criminal Procedure to warn the convicted person about the monitoring conditions they may face during the testing period.

The system of suspending the execution of the financial penalty in check crimes makes the criminals feel that they are under the supervision of judicial, security, and administrative bodies throughout the five-year testing period. This stamps them with a stigma of disdain and undermines societal trust in dealing with them, making their social rehabilitation difficult. Moreover, the risk of pursuit that follows the criminal complicates their lives and dealings with others when issuing a check. They feel beforehand the impossibility of making mistakes in handling this commercial document, as any mistake could lead to their reclassification before the judiciary as recidivists, which may damage their reputation in social life. In this situation, they are compelled to acquire professionalism and be vigilant against forms of fraud and deception by the check issuer to avoid suspicion in their transactions, which may turn them into dangerous criminals. Therefore, many criminals prefer the verdict of the financial penalty to be pronounced definitively without subjecting them to pursuit and monitoring under the suspension of execution system during this period.

Personal analysis of the suspension of execution system extends to the assertion that it imposes negative effects on the family environment of the criminals. Their children feel that their parents' financial rights are not being violated, which encourages them to follow their footsteps as they grow older. They may engage in fraud with checks while managing some of the businesses left to them by their criminal parents, as the non-implementation of the financial penalty deprives them of the sense of the seriousness of this type of crime, especially since children often take their parents as role models in their behavior and emulate their heroic traits²⁴. These effects also have negative repercussions on the national economy after losing trust in dealing with checks as commercial instruments replacing cash in local and international commercial and economic transactions²⁵. The essence of these effects is to reduce the punitive value of the suspension of execution system, as the imposition of a fine along with its implementation scares this type of criminals - mostly businessmen - by encroaching on their financial rights through the deduction of the fine amount. This leads to a worsening of their financial situation, especially with the enforcement measures taken to collect it, making the execution against them more effective than the suspension of execution system.

The system of suspending the execution of financial penalties in check crimes leads to the loss of the judiciary's prestige and consequently results in the criminals' feeling of indifference to criminal legislative rules, diminishing their importance and deterrence value for them.

Second Demand:

The Importance of Suspending Financial Penalties in the Crime of Issuing a Bad Check

Money is not just a means for individuals to support themselves and their families; it also serves as a pillar for self-affirmation in daily projects and gaining respect among members of society. Losing money leads to a sense of loss and marginalization in society, which may push individuals back into crime. Therefore, the system of suspending the execution of financial penalties in check crimes is effective in this regard, as it protects the offender's money from loss as long as they have no prior judicial record and the crime was committed inadvertently.

Furthermore, if we consider the commission of one of the check crimes by a legal entity, the execution of a financial penalty on them may disrupt the budget of this entity to a degree that may lead to financial insolvency, hindering its production and causing it to lose control in the market competition. This negative impact is not limited to the legal entity but also extends to the economic activity by reducing competition and promoting monopolization in the market. However, the verdict of suspending the execution of the financial penalty alerts the convicted legal entity to be cautious in future dealings with checks, without causing negative economic effects on consumers by halting production resulting from the execution of the financial penalty.

The system of suspending the execution of financial penalties in check crimes reflects an increase in awareness in the state's punitive policy. Each punitive legislation has its philosophy toward creating the optimal system suitable for rehabilitation and reintegration into social behavior, rather than rigid punishment, especially with accidental criminals. This can only be achieved through mitigation and rationalization of judicial follow-ups. It is not an exaggeration to say that France has made significant strides

²³ This means that the suspension of execution is revoked if the beneficiary of the suspension commits a felony or misdemeanor of common law crimes within a period of five years from the date of the first judgment, and therefore he is not liable to commit military and political crimes or offenses. See:

- Same reference, p. 349.

²⁴ Bouhental Yassin, Previous reference. p. 69.

-Dardous Mekki, Al-Mujazir in Criminology, Office of University Publications, Algiers, D.T., p. 191

²⁵ Bakhouch Ali, Previous reference, P. 87.

in its criminal policy after abolishing the description of the crime of issuing a bad check to confine dealing with this crime to administrative bodies only for financial and banking institutions without allowing criminal prosecution for this act before the judiciary under Law No. 30/12/1991, which activated the role of the banking profession in combating this criminal phenomenon associated with the bad check and exempted judicial authorities from the burden of prosecution and enforcement of penalties. Compliance with the Egyptian legislator in this context is also highly beneficial, as it has taken a pioneering stance in Arab legislation when it approved in the Commercial Law of 1999 the possibility of settling public prosecutions for the crime of issuing a bad check through reconciliation between the drawer and the beneficiary, making reconciliation a reason to end criminal prosecution. This is a prudent position sought by the Egyptian legislator to reduce the volume of prosecutions resulting from check transactions²⁶.

If the situation in France and Egypt as exemplary models in dealing with offenders committing the offense of issuing a bad check has achieved a significant level of rationalization and reform due to the positive results achieved by this legislative reform in reducing this criminal phenomenon, there should be no concerns in Algerian legislation about implementing the system of suspending the execution of financial penalties, especially considering the advanced analyses presented in this study regarding the proper adaptation shown by legal jurisprudence to this penalty as an original criminal punishment, such as imprisonment, which the judge can order with suspension of execution.

Conclusion:

The financial penalty prescribed as a punishment for committing the offense of issuing a bad check without sufficient funds under Article 374 of the Penal Code is an original punishment that does not bear the compensatory character assumed in other customs and tax offenses, as believed by the Algerian Supreme Court. Therefore, based on this adaptation, we conclude that it is permissible to suspend the execution of this penalty in light of what is stipulated in Article 592 of the Code of Criminal Procedure, similar to the suspension of imprisonment alongside the financial penalty. This is because the system of suspending the execution is likely to contribute effectively to reducing the phenomenon of crime associated with check transactions. Therefore, it is appropriate for the Supreme Court to reconsider its interpretation, especially regarding the narrow interpretation of Article 374 of the Penal Code.

List of references:

a) Books

- 1- Aghelis Bouzid, The correlation between the principle of free evidence and the subjective conviction of the criminal judge: A comparative analytical study between Algerian law, Egyptian law and some Arab laws, Dar Al-Huda, Ain Mellila, 2010.
- 2- Al-Qahwaji Ali Abdelkader, Fundamentals of Criminology and Punishment, Halaby Law Publications, Beirut, 2002.
- 3- Bouskia Ahsan, Al-Wajeez in General Criminal Law, 5th edition, Dar Homa, Algeria, 2007.
- 4- Bouskia Ahsan, Al-Wajeez in Private Criminal Law: Part I, Crimes against Persons and Crimes against Property, Dar Homa, Algeria, 2010.
- 5- Dardous Mekki, Al-Mujaz in Criminology, Office of University Publications, Algiers, Algeria, D.T.
- 6- Rahmani Mansour, Criminology and Criminal Policy, Dar Alaloum, Annaba, 2006.

b) University notes:

- Bouhentala Yassine, The Punitive Value of Custodial Punishment: A study in Algerian legislation, memorandum submitted for the degree of Master of Legal Sciences, specialized in criminology and punishment, Faculty of Law and Political Science, University of Batna, 2010-2011.

c) Articles

- 1- Tijani Fateh, "On the financial penalty for the check", Judicial Review, Supreme Court, No. 02, 2002, pp. 33-45.
- 2- Bakhouch Ali, "The check deed and how to apply the provisions of Article 374 of the Penal Code", Judicial Review, Supreme Court, No. 1, 2003, pp. 84-90.

d) Laws:

- 1- Order No. 66/156 of 08/06/1966, containing the Penal Code, JR No. 49, issued on June 11, 1966, amended and supplemented.
- 2- Ordinance No. 75/59, dated 26/09/1975, containing the Commercial Code, C.R. No. 101, issued on December 19, 1975, amended and supplemented.

²⁶ Bakhouch Ali, Previous reference, P. 88.

- 3- Law No. 05-04, dated February 06, 2005, containing the law on the organization of prisons and the social reintegration of detainees, JR No. 12, dated February 13, 2005.

e) Judicial decisions:

- 1- Decision of the Chamber of Misdemeanors and Violations of the Third Section No. 136249, issued on 09/09/1996, unpublished.
- 2- Decision of the Misdemeanors and Violations Chamber of the Third Section No. 169072, issued on 14/04/1997, unpublished.
- 3- Decision of the Misdemeanors and Violations Chamber, Third Section, No. 188085, issued on 28/09/1998, Judicial Journal, Issue 1, 1999, pp. 196-199.
- 4- Decision of the Misdemeanors and Violations Chamber of the Third Section No. 205627, issued on 27/04/1999, Judicial Journal, No. 2, 1999, pp. 70-74.
- 5- Decision of the Misdemeanors and Violations Chamber, Third Section, No. 179887, issued on 21/06/1999, unpublished.
- 6- Decision of the Misdemeanors and Violations Chamber, Third Section, No. 209673, issued on 21/09/1999, unpublished.