



## Monetary Penalty as a Penal Sanction in the Territory of the Basic Court of Prishtina in the Period 2011-2015

Kosovare SOPI<sup>1</sup>

**Abstract:** This thesis will tackle the fine penalties according to the Criminal Code of the Republic of Kosovo, with particular emphasis on the Basic Court of Prishtina during the period 2011/2015, which will talk about the statistics provided by the Court as well as elaboration of the fine penalties including its issuance as well. The thesis will address the monetary penalties, its meaning and monetary penalties in some countries of the region and beyond. The thesis will be based mainly on the research and analysis of the Criminal Code of the Republic of Kosovo as well as the Criminal Codes of the countries of the region that have been analyzed in this working document, without circumventing the Criminal Codes of some more developed countries. In addition, during the analysis, various scientific methods will be utilized, such as descriptive, comparative and various statistical methods, in order to address the issue of monetary penalties in more comprehensive manner. Likewise, in the last chapter we have presented many diverse tables, with the sole purpose of reflecting the chronology of issued monetary penalties throughout analyzed years.

**Keywords:** Monetary penalty; sanction; penal; Basic Court.

### 1. Introduction

Since fines or monetary penalties exist for a long time in various world legislations and is one of the first penalties, the research of this issue in the case of our state is of special importance as the same sentence is expressed as the main and complementary punishment. Fine or monetary penalty in the recent years with the implementation of new legislation and based on the EU Directives, is increasingly being implemented in our judicial system, since the same sentence is fulfilling the individualization punishment postulates and for its existence, the Republic of

---

<sup>1</sup> Teaching Assistant, University of Prizren Ukshin Hoti, Republic of Kosovo, Address: Rruga e Shkronjave, nr. 1, 20000, Prizren, Republic of Kosovo, Corresponding author: kosovaresopi@gmail.com.

Kosovo does not need to allocate material and financial means, and spend the same towards the normal functioning of the correctional system.

All European Union countries including the developed Western world as well, are paying great attention to the fine penalties and are imposing this type of penalty more than other penalties, and this is done for many reasons. The state budget itself provides new additional financial means deriving from the payment of fines, which may be utilised for different purposes or for the re-socialization of former convicts or for the modernization of the correctional system in the Republic of Kosovo. But the level of imposed fines not only in our country but also in the countries within the region depends directly on the level of economic development, since in the most developed countries the number of these penalties and the monetary amounts are much higher. Due to the space and the lack of statistical data, in this master's thesis we will focus solely on monetary penalties in the territory of the Basic Court of Pristina for the period 2011-2015.

### **1.1. Monetary Penalty as a Penal Sanction in the Territory of the Basic Court in Prishtina in the Period 2011-2015**

The crucial problem in the domain of sanctioning various criminal offenses for modern societies is related to selecting the level of effort to enforce and determine the possibilities towards punishing the parties as well as choosing the height of sanctions in order to maximize social welfare emphasizes the socially improper imposition of monetary sanctions, while it is socially expensive to apply non-monetary sanctions (Shavel, 2004, p. 463). With this assumption, non-monetary sanctions are less effective than monetary sanctions and according to this principle, the same should not be used if only through monetary sanctions the full effect of prevention can be achieved (Brady, 2000, p. 291). But on the other hand, if the expected sanctions, which can only be achieved through monetary sanctions, are lower compared to the damage they generate (create) from sanctioned offenses, non-monetary sanctions are indispensable to achieving increased and more efficient prevention.

In this case, several factors affecting the optimal use of non-monetary sanctions should be mentioned, as the probability and the possibility of using monetary sanctions is not sufficient for prevention, therefore the use of non-monetary sanctions is socially indispensable:

a) **The range of financial means**- if the value of financial means is smaller compared to the size of the sanction needed for prevention, then the discouragement tends to

be low if only monetary sanctions are utilised. If the entire wealth of the person is hundreds of dollars \$, then it will be very difficult for the same to be discouraged from committing the offense as it yields very low results with the use of monetary sanctions only;

b) **The possibility of avoiding the sanction** - depending on the possibility of avoiding sanctions, the amount needed to achieve discouragement will be higher and in this case the possibility for this sanction to be higher than the person. In this case, even if the means will not be small, the discouragement will be invisible to be achieved if the sanction imposition is low, and

c) **The expected damage due to the committed offense** - depending on the expected damage from the commission of the offence as well as its potential level, it is of the great importance to check the action which implies that there will be higher repercussions in the discouragement of action, whenever necessary, *caeteris paribus*, the greatest damage to the action, then it would be more useful to use non-monetary sanctions towards prevention.

### **1.2. The Background of (Monetary) Penalties**

Prior to the imposition of the prison sentence, various property, and material fines were applied, amongst the property fines, whilst the most frequently applied in practice were confiscation of property and punishment by fine or with money.

Confiscation of Property as a punishment relied on seizure of the property of the convicted person without compensation and remuneration. This punishment has its origins since the composition during the private reaction period (Halili, 2005, p. 91).

We have two kinds of property confiscations, and these are:

a) *Complete confiscation of property and*

b) *Partial confiscation of property*

The punishment with property confiscation has been for a long time in implementation, and this was one of the methods and ways in which the assigned regime dealt with its many different opponents, whether ideological or confessional. Confiscation of property represented a great blow not only to the property and to the convicted person himself, but also to the entire family of the person to whom confiscation was applied.

The punishments with fine or penalty also derive from the composition of the private reaction time. Penalty or monetary penalty is one of the earliest punishments in the

history of punishment, its primary essence lies in paying a sum of money set by the competent state body, such as court or other state body (Elezi et al., 1999, p. 72). Monetary penalties in the past were cashed in the state account and later in the emperor account, rulers, or local feudals, respectively local government (Halili, 2005, p. 95).

Later on, the monetary penalties could have been cashed in the interest of the plaintiff, respectively to the damaged person.

Penalty or monetary penalties were usually applied to traders, even to offenders, even for minor offenses.

On the path towards development and transformation of monetary penalties, we have had some forms of monetary penalties as a form of compensation or “**composito**”, later as a fine or “**frechis**”. Monetary penalties, as compensation, were often paid once a few times for damage caused. In the past is also known the punishment with cash in nature, for example, payment of a special kind of punishment. In this way, damages were paid for livestock, agricultural products etc. It is worth pointing out the opinion of German author Potiz that the monetary penalty has significantly influenced towards limiting the application of bodily and physical penalties. If the execution of the punishment was not executed in fine, then this punishment was replaced with more severe punishments such as bodily punishment, severe labor punishment, conversion into slaves and robbery.

Amongst the monetary penalties, we have the emerging of ideas and opinions on the humanization of equal penalties and their replacement with other penalties that contribute to the re-education and reintegration of convicted persons.

In the historical development, the monetary penalty is older than the sentence of deprivation of liberty. In the first period of private retaliation, compensation and supplementation of damage represent the basic sanction for more offenses.

In Old Rome, the prison served for the worst offenses, and the prison served to keep convicted criminals. In the 6<sup>th</sup> century, two types of monetary penalties were presented amongst German people:

- a) one was for the benefit of the damaged party;
- b) while the other for the benefit of the state.

Such a system was maintained even in the early Middle Ages (ie during the X-XIII centuries), where the monetary penalty was also dominant for murder acts, which

gave the penitentiary system the most humane form in comparison with the periods of the subsequent enforcement of the death penalty and bodily punishment. Today's punishment with a fine as a legal-public punishment originates from this punishment or part of the monetary penalty that they have paid for the benefit of the state account.

Over time, the governors created the great personal and state usefulness that could bring the damaged party from the competition of paying the monetary penalty. This created a change that took place in the 14<sup>th</sup> century that caused enormous consequences on the legal-penal system: the damaged party who did not earn anything from monetary penalty was not interested in prosecuting the perpetrator, so the state had to take over the prosecution function. This further caused changes in the character of the criminal proceedings where the accusing elements were increasingly weakened, replacing it with inquisition elements. Inquisitory procedure contributed to the strengthening of the position of legal-public sanctions, which provided conditions for the affirmation of the death penalty and the punishment of corporal punishment as regular punishments for even the slightest punishments. All this ends with the appearance of imprisonment in the late eighteenth and early nineteenth century, and today the despair of this kind of punishment leaves room for the monetary penalty to return to the criminal justice scene (Elliot & Quinn, 2008, p. 159).

The Contemporary Criminal Law mentions the monetary penalty as one of the most effective and main options of imprisonment, but it is questionable whether such a return can be successful if it does not return to the dual function of a fine: the public - supplementation of legal-public character of the punishment which is also in the interests of the damaged party (Kambovski, 2010, p. 512).

### **1.1. The Fine Penalty in Several Countries**

In the German Penal Code, the provisions foreseen for the monetary fine are set out in Chapter III, with the definition "sanctions" in the first sub-chapter, the sentences, Articles 40 - 43. The sentences in this code are: prison sentence, fine or monetary penalty and sentences in wealth. Article 40, par. 1 the lawmaker has determined a monetary penalty set in daily amounts within the minimum and maximum limits. The legal minimum of fine is 5 daily amount, while the maximum is 360 daily amount. When determining the amount as fines, the court is obliged to consider the personal and financial situation of the perpetrator. In this case, the daily amount can not be lower than 1 (one)

euro, but not higher than 30,000 euros. Revenues and profits of the perpetrator are a significant factor in determining the punishment, while the daily amount moves from 2 euros to 500 euros (item 2 of article 40).

Fine penalty in the French Criminal Code, where criminal offenses are classified by weight: crimes, delinquents and offenses (Kambovski, 2010, p. 512). Meanwhile, offenses are classified by weight in 5 different categories. For the most serious criminal offenses, punishments can be imposed only with effective imprisonment, whereas for fines and violations as a punishment, a penalty is also imposed (Article 131, paragraph 3, according to KPF, sentences of classical fine may imposed in fixed amount and punishment with fine according to the principle days- penalty fine, ie. that the two models are used in parallel.

Fine penalty in the Dutch Criminal Code - within this code foresees the imposition of these punishments for the commission of a criminal offense (Kambovski, 2010, p. 638): imprisonment (life sentence or for a certain period of time), custodial sentence, work of general benefit and punishment with fine.

The fine was initially foreseen for the slightest delinquents, and after 1983 the Law on Penalty Fines applies also to criminal offenses. Fine penalties are divided into 6 categories, with the greivoust category being the category six, a fine imposed only to legal persons and exceptionally natural persons who have committed a criminal offense related to the Law on Economic Violations and the law that is related to drugs. According to Article 23 of the IOB from the moment of the pronouncement of the judgment, the convict is obliged to pay the penalty by a fine. The minimum penalty fine ranges from 3 euros, while for other penalties are foreseen 6 different categories where the first starts with 370 euro; meanwhile the most serious one is the seventh category with 74.000 euro.

Common Law in the United States differs from the continental model of criminal law, not only in terms of structure and content but also in the content of criminal sanctions (Geary, 2002, p. 213).

In the US, the fine is determined in fixed amounts and in most cases it is used

for minor offenses, but in some cases it may be imposed for some shorter sentences imposed on jail if it is proved that the same is in accordance with the purpose of punishment. For example, in some federal states such as California, New York, Texas, Washington DC, some violations are punishable by fines such as the use of weapons in public places where the fine ranges from \$ 2,500 to \$ 5,000.

## **2. A Fine Penalty in the Countries of the Region**

### **2.1. Fine Penalties in the Criminal Code of the Republic of Macedonia**

**The Legislation of Fine Penalty** – Fine penalty can be imposed as the main and secondary punishment along with the punishment of imprisonment. For the fine penalty as the main punishment, with the amendments to the IMC of 2004 the system of daily fines is agreed (Article 38 paragraph 1): the penalty is imposed on a daily fine where the daily fine number can not be less than five; not even bigger than 360 daily penalties (Criminal Code of Macedonia, 1996). The smallest value of the daily fine is one euro in the counter value of denars and the largest five thousand euros in equivalent of the punishment (Article 38, paragraph 2). The amount of monetary fine is set so that the court initially measures the number of daily fines and in the end the number of daily fines multiplied with the set value of the fine.

The Court counts the number of daily fines with the implementation of the Penalty Measurement Regulation (Article 39), based on the criminal responsibility of the perpetrator, the weight of the offense and the purposes of the punishment. In this case, the court must also consider the mitigating or aggravating circumstances affecting the number of daily fines.

Determining the amount of a daily fine is a little more complex operation since initially the data on personal income from the court shall be provided as well as the data of the property of the perpetrator (Hall, 2005, p. 298). During this procedure, the court must start from the day-to-day income that the perpetrator realizes or can perform, as well as his or her family obligations or other obligations and his / her estate at the time of the judgment's adoption (Article 38, paragraph 3). The IMC defines also the notion of pure daily incomes (Article 122, paragraph 29): with pure daily income we mean the supplement in the name of the salary or other supplement from the labor report on behalf of the salary as well as other net income from carrying out activities or property and property rights, pure daily earnings are earned after

paying taxes or other legal obligations. If the court can not set a pure daily income even in this manner and if this will not stagnate the proceedings, than the average wage realized in the economy is calculated as the basis for determining the daily wage within the last three months at the time of trial. Due to the determination of the value of the daily fine, the court may request a report from the bank, from finances where the convict is employed or by other institutions, state bodies and natural persons who are obliged to provide the required reports and can not be called in defense of official secrecy (Article 38, paragraph 5). And here it is seen that there may be many obstacles in determining the value of the daily fine. For this purpose, for the implementation of the new provisions of the fine imposed the longest was on *vocatio legis* (six months) after the adoption of the IMC amendments in 2004 in order to allow judges to adopt the fine penalty technique according to the new system.

For the punishment of a fine imposed as a secondary punishment along with the punishment of imprisonment or the punishment on condition for which the punishment with imprisonment is set (Article 33, paragraph 3), the IMC maintain a system of fixed amount of money: the punishment is imposed on a sum that can not be lower than 20 euros and not even higher than 5,000 euros in counter value to denar without the application of earlier rights to daily fines. During the measurement of the sentence, the court takes into account the general rules for the determination of the punishment, in particular the condition of the perpetrator's property as well as his other incomes, and his family obligations (Article 39, paragraph 5). The daily fine is actually thought of as a unit that according to its weight corresponds to a day of imprisonment, which transforms itself into a case of a fine with a fine to imprisonment.

#### **2.4. Fine Penalties in the Criminal Code in the Republic of Serbia**

In Criminal Code of the Republic of Serbia, which entered into force on 1 January 2006 for the first time, punitive differences were imposed on monetary penalties. In the new code, unlike the previous codes, the special minimum and the maximum fine penalties are strictly defined (Criminal Code of Republic of Serbia, 2005). In the new Criminal Code, the fine penalty according to daily values is almost unused and this practical issue is subject to a fine of the amount determined by the Criminal Code. Given the current circumstances in Serbia, it is often justified the assessment of the possibility that this criminal sanction offers penalties with a fine that is not in line with the legislation in many EU countries, except for very controversial issue concerning the defining differences in a fine with respect to all criminal offenses for the purpose of gaining or material grievance, in which case the punishment with a



fine as the principal punishment may be imposed in the amount of up to 10 million dinars (1 euro = 125 dinars)

### **2.3. Fine Penalties in the Criminal Code of the Republic of Montenegro**

In the Criminal Code of the Republic of Montenegro, the following types of punishment may be imposed to the perpetrator for criminal offenses (Criminal Code of Republic of Montenegro, 2003):

- a) 40 years of imprisonment;
- b) Jail sentence;
- c) Monetary punishment - fine, and
- d) Work in the public interest.

Likewise, in Article 34 of this Code it is foreseen that the court may impose the main and accompanying punishment. A 40-year of imprisonment, jail sentence, and work in the public interest can only be imposed as the main punishment, while a penalty with fine can be imposed as the main and accompanying punishment. Article 39 of this Code foresees Fine penalties, where in paragraph 1 of this article it is foreseen that the fine penalty should not be lower than 200 euros while the maximum sentence not higher than 20.000 thousand euros, while for criminal offenses committed due to interest and material gain not exceeding 100,000 euros.

### **2.4. The Fine Penalty in the Criminal Code of the Republic of Croatia**

The Criminal Code of the Republic of Croatia in Chapter IV of Article 40 provides for the types of punishments that may be imposed on convicted persons under this Code (Criminal Code of Republic of Croatia, 2015).

According to this Article (40) the types of punishments may be:

- a) Punishments as monetary penalty or imprisonment, and long-term imprisonment;
- b) Fine penalty may be imposed as a principal punishment, but also as an indirect punishment;
- c) The punishment of imprisonment and the punishment of long-term imprisonment may be imposed only as a principal punishment;
- d) In cases where the law for several offenses determines a prison sentence of up to 3 (three) years the court may impose a penalty as the main punishment;

e) For criminal offenses committed because of personal gain, a fine penalty as an indirect punishment may be imposed when it is not provided by the law or when by law it is foreseen that the perpetrator will be punished by imprisonment or a fine, whereas the court as the main punishment imposes the imprisonment sentence (Criminal Code of Republic of Croatia, 2015).

According to the Criminal Code of the Republic of Croatia, the purpose of punishment is to express social punishment for the commission of criminal offenses, to increase the trust of citizens in the legal system that is governed by the principle of the rule of law, the impact on perpetrators and to all others to not commit criminal offenses, through the strengthening of awareness of the damages caused by perpetrators but also of the justice of punishment, in order to enable perpetrators to participate more fairly in society.

### **2.5. Fine Penalty in Republic of Kosovo**

The fine penalty in the Criminal Code of the Republic of Kosovo can not be less than one hundred Euros (100), while the fine penalty can not exceed twenty-five thousand Euros (25,000), while for criminal offenses related to terrorism, trafficking in persons, organized crime or criminal offenses committed for the purpose of obtaining material benefit may not exceed five hundred thousand Euros (500,000).

The judgment imposes the term of payment of a fine. The deadline may not be shorter than fifteen (15) days or even longer than three (3) months, but in reasonable circumstances the court may allow a fine to be paid in installments for a period of time that can not exceed two (2) years. The judgment must also determine when the installments are to be paid and it should be noted that the possibility of installment payment will be revoked if the convicted person fails to pay the installment in due time (Criminal Code of Republic of Kosovo, 2010).

“If the convicted person does not want or can not pay the fine, the court may replace the fine with a punishment of imprisonment. When the sentence of imprisonment is replaced by a fine of one day of imprisonment, a penalty of twenty (20) Euros shall be calculated. The punishment of imprisonment may not exceed three (3) years. If the convicted person does not want or can not pay the fine in full, the court shall replace the remainder of the fine by imprisonment as provided for in paragraph 3 (3) of this Article 46. If the convicted person pays the remainder of the fine penalty the execution of the punishment of imprisonment will be terminated. If the convicted person does not wish or can not pay the fine, the court may, by the consent of the

convicted person, instead of imposing the punishment of imprisonment, replace the fine with the order of general benefit.”

A general-benefit work order is calculated so that eight (8) hours of general-benefit work are counted to a fine of twenty (20) Euros. The duration of the work of general benefit can not exceed two hundred and forty (240) hours (Criminal Code of Republic of Kosovo, 2010). Also, in the Criminal Code of the Republic of Kosovo, it is foreseen that a fine will not be executed after the death of the convicted person (Salihu, 2010, p. 457).

The fine is part of the types of property punishment. By virtue of this punishment, the perpetrator of a criminal offense is obliged to pay a certain amount of money for the benefit of the state. Fine penalty or monetary penalties are recognized by all criminal law provisions of contemporary states. Among the main punishments, based on the weight, the fine penalty in our punishment system is the easiest type of punishment. Fine penalty is particularly suitable for cases of light criminal offenses, but it can also be applied restrictively in the field of secondary criminality. The advantage of this kind of punishment is the fact that it is often an adequate remedy for non-execution of short-term imprisonment (Philip, 2002, p. 354). Thus, through this punishment, contemporary criminal law aspires those perpetrators of light and even medium-sized offenses not to keep the stamp of the detainee, and to not be stigmatized unnecessarily. Also as advantage of this fine, it is mentioned that this is separate and can easily fulfill the postulates of individualization of punishment and that for its execution the state does not need to allocate material resources and spend the same on the normal functioning of the prisons .

Taking into account the advantages of the fine penalty, contemporary criminal law is oriented in all cases of criminal offenses, where the punishment of imprisonment is no longer needed, to impose fine penalties, material compensation of punishment and its surrogates. Thus, respecting the concept of limiting the punishment of imprisonment, now in contemporary criminal law the fine penalty is one of the most important and most frequent punishments. For this reason, great importance is now being given to the fine penalty and the issues related to this punishment in order to increase its effect but at the same time to reduce the costs for the functioning of the prison system, and at the same time to fill in the state treasury (Salihu, 2010, p. 457).

The purpose of the fine penalty is to let the perpetrator of criminal act know that he has committed the criminal offense and at the same time for a certain time to affect his standard of living, a blow which in the present way of life in the conditions of consuming society is of enormous importance. However, in the case of measuring

the punishment with a fine, the material and wealth condition of the perpetrator must be taken into account, so that the persons with different material and wealth condition, the weight of this type of punishment to feel the same. In this regard, some states (eg Austria, Germany, Sweden, Slovenia, and Croatia), recognize such punitive systems, where the amount of a fine is set depending on the wage and salary that the convicted person earns for a working day.

## **2.6. Definition of a Fine Penalty According To Criminal Code of the Republic of Kosovo**

Penalties are in the focus of attention and interest in criminal law and criminal policy. Penalties are measures taken by the state in order to protect the society from criminality. These are a kind of reactions of the state to the perpetrators of criminal offenses and attempts to protect citizens and society from harmful acts. Penalties are therefore enforced measures that are implemented by force and represent repression against the perpetrator. By means of convictions, the perpetrator of a criminal offense is limited or impeded from its rights, freedoms and other very important values, such as freedom of movement, movable or immovable property, prohibition of performing the profession, etc.

Penalties are intended to provide basic living conditions in the organized society. Otherwise, if punishment is not in the function of combating and preventing criminality, but instead it serves to the narrow interests of the bureaucratic apparatus or political parties, in the position or opposition, then the courts become a tool for their purpose to protect their interests rather than the interests of wider population.

Punishment is reasonable only when there is no better way of protecting the citizen and the society. But this necessity of applying the punishment requires that the punishment be realized only in the manner and in the form that corresponds to the concept of the society of our time, and that it is in accordance with the perception and beliefs of today's culture and general democratic postulates. These postulates simultaneously prohibit harsh and humiliating punishments, as well as non-human treatment of perpetrators.

Even the lightest sentences to some extent are a bad thing to a person who has committed a criminal offense. Consequently, in the history of criminal law, the most frequent and major changes have been expressed precisely in the area of punishment (Pradel, 2000, p. 92). These changes are expressed separately in the second half of the twentieth century. In the course of these changes, new tendencies and processes have been expressed which have also influenced contemporary criminal legislation.

New tendencies in the development of penalties and, in general, of criminal sanctions in particular consist in these key segments: in establishing a new society report to the delinquent that it should not be treated as an enemy of the society but with adequate penal and judicial treatment and in social community to return back as an equal and beneficial member of the society, in prescribing alternative punishment, especially some variants of punishment as substitutes for the punishment of imprisonment such as conditional sentences, work for the general social interest, semi-liberty etc. (Samaha, 2000, p. 125). In further reinforcing the special preventive measure in criminal law especially in the form of re-socialization, in the weakening of the classical remunerative elements of the conditional sentence that from within and the purpose of punishment to not lose its social, ethical elements and its values, literally to be LEGITIMATE.

If these postulates are fulfilled, then the types and nature of criminal sanctions will be integrated within the framework of the democratic, legal state (Salihu, 2010, p. 457).

Fine penalties take part in the types of property punishment. By this penalty, the perpetrator shall be obliged to pay a sum of money for the benefit of the state within the prescribed timeframe.

Fine Penalty or monetary fine is recognized by all criminal legislations of contemporary states. Fine penalty is one of the oldest penalties. Among the main punishments, by weight, the punishment with fine in our punitive system is the lightest type of punishment. Because of its features and advantages in contemporary criminal legislation, the punishment with fine is increasingly being affirmed and massive in most of the world's states. As a result of this unstoppable trend some authors rightly consider the criminal sanction of the future. There is no data on the participation of fine penalties in Kosovo, in the general structure of imposed sentences, but according to some indications and partial data, the number of these sentences does not reach 10%. Despite the difficult material situation of the perpetrators of criminal offenses, the courts in Kosovo should make serious efforts to impose a greater number of fine penalties, since it is in the interest of convicted persons, but at the same time in the interest of the state, as this increases the budget revenues, while on the other hand the costs that will be paid for the normal functioning of the prison system are reduced.<sup>1</sup> The Fine penalty is especially suitable

---

<sup>1</sup> According to official statistics of Correctional Service of Kosovo and the data of Ministry of Justice, the average cost for a detainee in Kosovo for one day is at about 28 Euro.

for cases of lighter offenses, but in more restrictive manner can also be applied in the area of criminal domain.

### 3. Enforcement of Fine Penalties in the Territory of the Basic Court of Prishtina in the Period 2011-2015

The analysis of the enforcement of fine penalties within the Basic Court of Prishtina includes the period from 2011 to 2015. Due to the difficulties in providing all the data at the beginning of the work, we will talk about the reflection of the number of cases imposed with fines in the territory of this Court, and later we will analyze the statistics of various criminal offenses where the Court has imposed fines.

**Table 1. Penalties imposed by the former Municipal Court and the former District Court Judges in Prishtina for 2011 and 2012**

| 1 | Year | Former Municipal Court | Former District Court | The overall number of fine penalties |
|---|------|------------------------|-----------------------|--------------------------------------|
| 2 | 2011 | 2.026                  | 232                   | 2.258                                |
| 3 | 2012 | 3.316                  | 226                   | 3.542                                |
|   |      |                        | Total:                | 5.800                                |

**Table 2. Fine penalties imposed by the District in Prishtina during 2013**

| 1             | Year | Basic Court in Prishtina General Department |     | Basic Court in Prishtina Department for Serious Crimes |    | The number of fine penalties |
|---------------|------|---|-----|--|----|------------------------------|
| 2             | 2013 | Application of CCK                          | 549 | Application of CPCK                                    | 20 | 569                          |
|               |      | Application of CCK                          | 57  | Application of CPCK                                    | 10 | 67                           |
| <b>Total:</b> |      |   |     |  |    | <b>636</b>                   |

Fine penalties imposed by the General Department where the applicable law was still in force in the former CCK, where during this year 549 fines were imposed by the General Department, where the applicable law was the CPCK and in total 57 fine penalties were imposed. The Department for Serious Crimes when the applicable law was former CPCK issued 20 fine penalties, while in the Department for Serious Crimes where CCK law was applicable only 10 fine penalties were imposed (Basic Court of Prishtina, 2013).

**Table 3. Fine penalties issued from the Basic Court of Prishtina during 2014**

| <b>1</b>      | <b>Year</b> | <b>Basic Court of Prishtina General Department</b> | <b>Basic Court of Prishtina Departamenti për Department for Serious Crimes</b> | <b>Number of fine penalties</b> |
|---------------|-------------|--|--|---------------------------------|
| <b>2</b>      | <b>2014</b> | 894  | 133  | 1027                            |
| <b>Total:</b> |             |  |  | <b>1027</b>                     |

Fine penalties imposed by the Basic Court in Prishtina during 2014 when the new criminal code of the Republic of Kosovo was applied, a total of 1,027 sentences were imposed, out of which 897 were imposed by the General Department whilst the Department of Serious Crimes has issued only 133 fines (Basic Court of Prishtina, 2014).

**Table 4. Fine penalties issued from Basic Court of Prishtina during the year 2015**

| <b>1</b>      | <b>Year</b> | <b>Basic Court of Prishtina General Department</b> | <b>Basic Court in Prishtina Departamenti for Serious Crimes</b> | <b>The number of fine penalties</b> |
|---------------|-------------|--|---|-------------------------------------|
| <b>2</b>      | <b>2015</b> | 133  | 103   | 236                                 |
| <b>Total:</b> |             |  |   | <b>236</b>                          |

In the territory of the Basic Court in Prishtina during 2015, a total of 236 convictions were imposed, out of which 133 were imposed by the General Department, whereas the Department for Serious Crimes has issued only 103 fines (Basic Court of Prishtina, 2015).

Fine penalties imposed during the calendar year 2015 were much lower than those imposed in the previous year (the number of sentences imposed in 2015 was more than four times less than the fines imposed during the 2014).

In the course of the analysis, we will focus on examining the committed crimes, one by one, imposed with a fine in the territory of the Basic Court of Prishtina.

**Table 5. The total punishments imposed by a fine in the Basic Court of Prishtina in the time period 2011/2015 according to the type of criminal offense**

|    | CRIMINAL OFFENSES   | TOTAL        |
|----|---|--------------|
| 1  | Criminal offenses against Kosovo and its residents / offenses against the constitutional order and security of the Republic of Kosovo | 5            |
| 2  | Criminal offenses against international law / vp against humanity and values protected by international law                           | 4            |
| 3  | Criminal offenses against life and body   | 985          |
| 4  | Criminal offenses against human rights and freedoms   | 427          |
| 5  | Criminal Offenses against Labor Relations   | 2            |
| 6  | Offenses against honor and authority  | 2            |
| 7  | Criminal Offenses Against Sexual Integrity  | 9            |
| 8  | Criminal offenses against marriage and family   | 4            |
| 9  | Criminal offenses against public health   | 18           |
| 10 | Criminal offenses against the economy   | 143          |
| 11 | Criminal offenses against property  | 3.125        |
| 12 | Criminal offenses against the environment, animals, plants and cultural objects   | 110          |
| 13 | Criminal offenses against the general safety of people and property   | 140          |
| 14 | Criminal Offenses against Traffic Safety  | 2.124        |
| 15 | Criminal offenses against the administration of justice   | 203          |
| 16 | Offenses against public order and legal actions   | 1.122        |
| 17 | Criminal Offenses against Official Duties / Official Corruption and Offenses against Official duty                                    | 38           |
| 18 | Criminal offenses against voting rights   | 2            |
| 19 | Criminal offenses of narcotics  | 25           |
| 20 | Organized Crime   | 0            |
| 21 | Criminal Offenses against Municipal Services  | 44           |
| 22 | Criminal Offenses of Weapons  | 191          |
|    | <b>TOTAL IMPOSED FINE PENALTIES (2011-2015)</b>   | <b>8.723</b> |

### 3.1. The Prospect of Imposing a Fine Penalty

In the science of criminal law as an advantage of the fine penalty the following reasons are given:

- a) is a human punishment as opposed to imprisonment;
- b) it is an adequate remedy for non-execution of a punishment of short-term imprisonment;
- c) the convicted person does not keep the stamp of the detainee, is not stigmatized and has been separated and can easily fill the postulates of the individualization of punishment;
- d) for his execution the state does not have to spend material means from the state budget, such as the case of imprisonment;



e) the convicted person is not exposed to the influence of dangerous perpetrators who may be in close contact with him during imprisonment;

f) the convicted person does not lose his job, which does not become a burden on the State's social assistance

g) the state saves, spends fewer funds on the functioning of the prison system, but at the same time with the payment of fine penalties which contributes towards the increase of the budget of the given state (Salihu, 2010, p. 456).

By looking at and analyzing the advantages of a fine penalties, the contemporary criminal law is oriented in the direction that in all cases of criminal offenses, where the punishment of imprisonment is no longer necessary, imposing fines, material compensation of punishment and its surrogates. Seeing all these advantages of punishment with a fairly fine we can conclude that this sentence takes a very important place in contemporary criminal law.

In reality, the payment of a monetary penalty is, in itself, only a transfer of purchasing power compared to the expenditure of real resources; on the other hand, the imposition of a non-monetary sanction (such as imprisonment) involves in itself considerable direct costs, which greatly affect the well-being of sanctioned individuals.

All the European states and the developed Western world are paying great attention to the fine penalty and are imposing this type of punishment more than the other punishments, and this is done for many reasons that the state budget itself provides new additional means deriving from the payment of fines, which means may be used for various purposes or for the resocialization of the former convicts. And here comes the famous saying of Makiaveli, that *"The man is quicker forgetting the death of his father, than losing his purse"* (Salihu, 2010, p. 456).

#### **4. Conclusion and Recommendations**

From the analysis of European criminal legislation it can be seen that in most states simultaneously the system used is days- the fine penalty, as well as the classic model of fine penalty in the specified monetary amounts determined in (France, Sweden, Finland and Montenegro). Meanwhile, the system of days - fine penalty is determined in Germany, Austria and Slovenia, where the daily amount is determined on the basis of the net income principle, while the principle of the loss system is used

in the state of Austria. The classic system of fine penalty in the fixed amount is applied in Italy and the Netherlands.

The fine penalty must be in the future a more important and comprehensive pillar. The purpose of fine penalty should be to affect the standard of living of perpetrators with the sole purpose of removing them from attempting to commit the same criminal offenses.

This thesis presents and analyzes existing models of fines with special emphasis on the Criminal Code of the Republic of Kosovo, Republic of Albania, Republic of Macedonia, Republic of Croatia, Republic of Montenegro and Serbia. But in the short analysis, the models of fine systems in some other countries of Europe and the world have been examined as well. The purpose of increasing the imposition of fine penalties or replacing it with work of general interest is primarily aimed at reducing the number of prisoner population, with the view in reducing the cost of the Kosovo Correctional Service (in the year 2015 the budget of this service was about 16 million euros needed to maintaining and structuring the convicts in 7 correctional centers), which have accommodation capacity of about 2,300 prisoners, while the average of those in effective imprisonment ranges from 1.780 to 1.9000 inmates and on the other hand the increased revenues from the collection of fine penalties that would significantly increase Kosovo's budget.

According to statistics provided from the Basic Court in Prishtina, the number of punishment imposed with fines, varies from year to year during the observed period of time. In the first two analyzed years (2011 and 2015) we had the highest number of fines imposed, ranging from 2,258 and 3,542 fine penalties (altogether 5,800). In 2013, we had a rapid reduction of the imposed fine penalties, where this number reached 636 fine penalties. In 2014 we had a doubling number of fine penalties imposed compared to the previous year, whereas in the last year we analyzed there was a rapid decline of fines, a total of 236 fines. If we compare the year 2015 with 2011 and 2012, we can conclude that we have a 12-fold reduction in penalties imposed by a fine.

The reasons for this reduction may be complex, but one of the primary reasons is the employment of young judges who are not yet prepared and familiar with duties and responsibilities throughout the judicial system.

Referring to table no. 27 out of 22 criminal offenses analyzed in this thesis, during this period of time a total of 8,723 fines were imposed in the territory of the Basic Court of Pristina. The greatest participation in the total of fine penalties within the

framework of the analyzed offenses are: criminal offenses against property with 3.125 fines (accounting for about 36% of the total number of fines imposed in 2011-2015), offenses against traffic safety with 2,124 offenses (or 24% of the total number of fines), offenses against public order and legal actions with 1.122 fine penalties (13%), offenses against life and body with 985 penalties fines (11%), criminal offenses against human rights and freedoms with 427 fine penalties (4.9%) and criminal offenses with weapons 191 fine penalties (2.2%). It should be noted that for 16 other criminal offenses where it was possible to impose fines, during this period of time less than 800 fines were imposed, accounting for less than 9% of the total imposed fines.

## 5. References

- Basic Court of Prishtina (2015). *Annual Report*. Prishtina.
- Brady, D. (2000). *Criminal Law*. New York: Aspen Publishers, p. 291.
- Elezi, I.; Kapuci, S. & Haxhia, M. (1999). *Commentary of Penal Code of the Republic of Albania*. Tirana, p. 72.
- Elliot, C. & Quinn, F. (2008). *An Introduction with Capston Cases*. Pearson Education. 9 Edition, p. 159.
- Geary, R. (2002). *Understanding Criminal Law*. Routledge. 1<sup>st</sup> edition. London, p. 213.
- Hall, J. (2005). *General Principles of Criminal Law*. The Lawbook Exchange, Ltd., Reprint of second edition. New Jersey, p. 298.
- Halili, R. (2005). *Penology*. Prishtina, pp. 91-95.
- Kambovski, V. (2010): *Criminal Law*. General Part, Skopje, pp. 512-638.
- Philip, C. (2002). *Introduction to Criminal Law*. Jones & Bartlett Learning. 1<sup>st</sup> Edition. London, p. 354.
- Pradel, J. (2000). *Droit Penal General*. Paris, p. 92.
- Salihu, I. (2010). *Criminal Law*. Prishtina, pp. 455-457.
- Samaha, J. (2000). *Criminal Law*. 10<sup>th</sup> Edition. Cengage Learning. London, p. 125.
- Shavel, S. (2004). *Foundations of Economics Analysis of Law*. Harvard University Press, p. 463.
- \*\*\* (2010). Criminal Code of Republic Kosovo. Prishtina.
- \*\*\* (1996). Criminal Code of Republic of Macedonia, Skopje.
- \*\*\* Criminal Code of Republic of Serbia, no. 85/2005.
- \*\*\* Criminal Code of Republic of Croatia, no. 125/11.
- \*\*\* Criminal Code of Montenegro, no. 70/2003.