

# LEGAL REGULATION OF THE PENALTY WARRANT IN THE UAE LAW: AN ANALYTICAL STUDY

Ibrahim Suleiman Al Qatawneh, Al Ain University  
Moustafa Elmetwaly Kandeel, Al Ain University, Tanta University

## ABSTRACT

*This study has analytically dealt with the penalty warrant in the UAE Law particularly since the penalty warrant is an alternative form to the Federal Laws of Procedures, issued by the public prosecution to adjudicate misdemeanours and contraventions in accordance with the provisions of Article (333) of the Federal Laws of Criminal Procedure. It aims to adjudicate the lawsuits quickly and without arguments from the litigants and their absence. This study addressed the legislative provisions of the penalty warrant system by presenting the penalty warrant's concept and nature, its conditions and abolition as well as its authenticity, and execution forms. Following a review of the issue of the penalty warrant, this system turned out to be highly important due to its practicable merits that serve justice and generate, when applied, great benefits for the judiciary and individuals.*

**Keywords:** Public Prosecution, Penalty Warrant, Misdemeanors, Contraventions, Simplification of Procedures

## INTRODUCTION

The notion of brevity in criminal proceedings is a basis for the speedy adjudication of the criminal lawsuits proceedings through what is known as simplification of proceedings. That is through a set of legislative mechanisms that lead, in some crimes, to the termination of the criminal lawsuits within a short period. Among the simplistic legislative means of procedures is the so-called penalty warrant adopted by the UAE legislature in accordance with Federal Decree-Law No. (17) of 2018, amending some of the articles of Criminal Procedures Laws promulgated by the Federal Act No. (35) of 1992. It has also empowered the public prosecution to adjudicate specific lawsuits of misdemeanours and contraventions without the accused being referred to the court. Therefore, the need to introduce legal provisions has served the purpose, which the legislature has already done by amending the Laws of Criminal Procedures by adding articles to its originals, including the penalty warrant system. The penalty warrant contributes significantly to the development of legal and judicial procedures in the state to speed up the processing and resolution of communications and to eliminate the slow pace of litigation. Whereas, the speedy adjudication of lawsuits underlines the merits of the said decree without any prejudice to the fair trial guarantees to ease the workload across the existing courts as well as to limit the number of referred criminal lawsuits. In addition to that, it shall respond to practical considerations that require simplifying litigation procedures and reducing the time, effort, and expenses of criminal lawsuit parties. Not many studies have addressed the legislative provisions of the penalty warrant system by presenting the penalty's warrant concept and nature its conditions and abolition as well as the authenticity and execution forms. Therefore, this study fills this gap by carrying out an analytical approach to answer the problem and inquiries by reviewing the penalty warrant, its legislative provisions and the jurisprudence. in context of UAE. The study contributes in a way that it seeks to develop the penalty warrant system in UAE law by putting forward some recommendations that will help to achieve justice.

## Study Problem

The problem presented within this study is the adequacy of penalty warrant articles and lack of authenticity of penalty warrant before the concerned civil courts, which entails the wastage of the right of the criminal unable to fulfill his right before the civil court. The problem of this study can be sub-divided into several inquiries:

1. What is a penalty warrant and what is its nature?
2. What are the terms of the penalty warrant?
3. How authentic the penalty warrant is?
4. What is the problem faced by penalty warrant execution?

## Study Objective

This study objective was to clarify the concept of a penalty warrant, its contribution to justice, and its compatibility with general rules.

## METHODOLOGY

### Study Approach

To achieve the objectives of the study, the researcher has adopted analytical approach, which is based on posing, analyzing and answering the problem and inquiries by reviewing the penalty warrant, its legislative provisions and the jurisprudence.

## SUMMARY OF THE FINDINGS AND DISCUSSION

### The Concept of Penalty Warrant and its Legal Nature

Penalty warrant is newly introduced in the Federal Procedures Law, as it is an alternative means of adjudicating criminal lawsuits specified under the provision of Article (333) of the Federal Criminal Procedure Law, through which the lawsuits are adjudicated promptly, without arguments from the litigants and in their absence. Thus, this section was divided into two sub-sections, where the first one is being devoted to the definition of a penalty warrant while the second specified its legal nature.

#### The First Subsection: Definition of Penalty Warrant

Articles (332)-(345) of the Criminal Procedure Law and Decree No. (119) of 2018, issued by the Attorney-General, have been dealt with by the UAE legislature. It is defined as the judicial decision of a member of the Public Prosecution to rule on the subject of criminal lawsuits by a fine, without being referred to the competent court<sup>1</sup>. Neither the Egyptian legislature<sup>2</sup> nor the Omani or the French legislature<sup>3</sup> have defined it. Jurisprudence defines the penalty warrant as a judicial order of conviction or release from the competent court without following the procedure of trial for minor contraventions such as misdemeanors and contraventions<sup>4</sup>. According to another aspect of jurisprudence, the penalty warrant is issued to the accused by the judge or public prosecutions and therefore, he may accept it and pay the fine so that the criminal lawsuit shall lapse, or he may rather object to it<sup>5</sup>. The aforementioned jurisprudential aspect added that the penalty warrant is present in

most of the legislation, even if the names differ. In Jordan, the penalty warrant was mentioned within the laws of Criminal Procedure in Articles (194)-(199)<sup>6</sup>, as well as in Lebanon and in Egypt within the penalty warrant. Hence, it should be pointed out that only the previous definitions were mentioned to prevent their recurrence, as they came differently. Through its induction, it turns out that the penalty warrant is:

1. Differently named, as in the UAE, Egypt and the Sultanate of Oman it is called the penalty warrant, while in the Hashemite Kingdom of Jordan and the Lebanese Republic it is called the “summarily.”
2. The penalty warrant is issued by a member of public prosecution, as in the case of the UAE, while in Egypt it is issued by a judge or a member of public prosecutions and in Jordan it is issued by a judge in accordance with the summarily.
3. It turns out that the penalty warrant was recently introduced in the UAE when the section on special criminal procedures was added under the provisions of Criminal Procedure Law No. (17) of 2017. However, it was introduced in old times, as in the French legislature, which was inspired by the penalty warrant of the German procedural system of 1919 called "Strafbefehl"<sup>7</sup>. As for Arab legislation, it was stipulated by the Iraqi legislature in Articles (205)-(211) of the Criminal Procedures Law No. (23) of 1971, and in the Egyptian Articles (323)-(330) of the Amended Criminal Procedure Law of 1959, and in the Syrian Articles (225)-(230) of the Criminal Procedures Law No. (112) of 1950.
4. The penalty warrant applies only to minor crimes, due to their insignificance and seriousness<sup>8</sup> which are subject to judgment by only a fine, or a fine and imprisonment<sup>9</sup>.

The legal basis for the penalty warrant system is based on simplifying procedures and reducing them in minor lawsuits such as misdemeanors and contraventions that do not require long procedures. Due to the simplicity of the committed crime<sup>10</sup>, the legal basis is limited to the minutes of investigation with a view to reducing the backlog of lawsuits in the courts. It also aims to lessen the burden on judges so that they can consider other large and important issues that require time and effort.

### **The Second Subsection: The Legal Nature of the Penalty Warrant**

The legal nature of the penalty warrant has aroused jurisprudential argument and discussion regarding whether it is considered a penal ruling<sup>11</sup>, or as conciliation. The public prosecutor proposes conciliation to the accused and so if he accepts it and pays a certain fine, the penal case expires, or he may reject and challenge it. Since the penalty warrant is in full conformity with the penal provisions, it decides on the contraventions, which were heard by the misdemeanor court. Due process is applied when lawsuits, under the Public Prosecutor's Decree No. (19) Of 2019, are considered by the public prosecution. These procedures are applied by the misdemeanor court when it considers misdemeanors and contraventions, as can be seen from the following:

1. In both cases, litigants are informed of the time of the criminal lawsuit<sup>12</sup>.
2. Both of them consider the criminal lawsuit in the absence of the accused and issue a decree and deem that as a mere offense<sup>13</sup>.
3. Both of them settle the penal case and end the penal adversarial. They have the executive power, so they possess the power of the adjudicated matter<sup>14</sup>. The accused may challenge a penalty warrant issued by the competent public prosecutor within seven days from the date of its issuance if he is present or from the date of its announcement if he was absent, as is the objection submitted to the judgment issued by the misdemeanor court<sup>15</sup>. Both objections follow the procedures established by Criminal Procedure Law.

In light of the foregoing, the penalty warrant is a penal sentence that has the characteristics of the one-handed down by the court of misdemeanors for committing misdemeanors and contraventions. Particularly, since the legislature refers to the penalty warrant in the Criminal

Procedures Law in the third section of the various provisions and not in the second sub-section of the termination of the criminal lawsuit.

### **Conditions of the Penalty Warrant Issuance and Repealing**

The issuance of a penalty warrant requires conditions to be met, *inter alia*, regarding the issuing authority of the penalty warrant and others related to the crime and punishment. Thus, this section is divided into three subsections: the first one applies to the conditions of the penalty warrant's issuing authority while the second relates to the offence conditions, and the penalty conditions will be referred to in the third sub-section.

#### **The First Subsection: Conditions of the Penalty Warrant Issuing Authority and Repealing**

In order to issue a penalty warrant, the UAE legislature confines to granting the member of the public prosecution to decide on the subject matter of the criminal lawsuit, which are not considered to be preserved or referred to the competent court of misdemeanors and contraventions<sup>16</sup>. A member of the public prosecution whose rank is not below a Chief Prosecutor may repeal the penalty warrant and the Attorney-General may do so as well<sup>17</sup>. Through this provision, the following is stated:

The UAE legislator has stipulated the issuance of a penalty warrant from a member of the prosecution only, in accordance with the provisions of Article (332) of the Federal Laws of Criminal Procedures, such as the Egyptian legislature. This is different from other legislation in which a penalty warrant is issued solely by the governing power, as stated in some laws that gave the criminal court (misdemeanors) the power to adjudicate a penalty warrant. It deals with minor crimes such as misdemeanors and contraventions. As in the case of the Iraqi and Jordanian legislature, where it is issued by the judge in the summarily being minor and insignificant, which are already within its jurisdiction. Whenever the criminal lawsuit is involved, the concerned member of the public prosecution is entitled to issue the penalty warrant, and the member of the public prosecution has discretionary power to issue the penalty warrant. Besides, a member of the public prosecution, who is at least a Senior Crown Prosecutor, issues the penalty warrant for the contraventions set forth in Article (3) of the Attorney-General's Decree No. (119) of 2019. That is owing to the legal and practical expertise of the prosecutor, as well as the significance of the penalty warrant as a judgment handed down by the prosecutor without investigation.

Secondly, with regard to the abolition and amendment of the penalty warrant and with reference to the legal provisions relating to the penalty warrant, there are two ways of repealing the penalty warrant:

- 1- The first way is through the public prosecution, a member of the public prosecution, whose rank is at least a Chief Prosecutor and whose decree is issued by the Attorney-General, is entitled to amend the "penalty warrant" or repeal it within 7 days from the date of its issuance. Repealing the penalty warrant shall entail deeming the made decree as if it was not, in addition to proceeding and disposing of the criminal lawsuit in the methods established in the Criminal Procedures Law.
- 2- The second way is through the Attorney-General, the legislature also grants the Attorney-General the right to amend or repeal a penalty warrant within 30 days from the date of its issuance or amendment or from the date the accused waived his objection even though it had already been executed.

#### **The Second Subsection: Conditions-Related to Crime**

The Federal Legislature has stipulated that the penalty warrant is issued only in cases of misdemeanors and contraventions<sup>18</sup> contained in Attorney-General's Decree no. (19) of 2019, among the contraventions provided for in the Federal Penal Law, Federal Law No. (6) of 1973 on the entry and residence of foreigners and its amendments and Federal Law No. (21) of 1973 concerning road traffic and its amendments. Based on the above-mentioned, the following conditions may be provided:

- 1- The crime must be a misdemeanor, in order to issue a penalty warrant, the offence must be a misdemeanor and shall be punishable by a fine not exceeding 10,000 Dirhams, as provided by the Attorney-General's decree, as set out in table<sup>19</sup> and it was exclusively mentioned. The legislature has excluded certain contraventions, even though they are misdemeanors and are punishable by imprisonment or a fine, which are unpublicized defamation and insult in addition to defamation and insult if it is on the public official only<sup>20</sup>. This indicates the insignificance of a misdemeanor and that is the case in many laws, including Jordanian law in Articles (194) and (195) of Criminal Procedure Law and Egyptian law in Articles (323) and (324) of the Criminal Procedure Law<sup>21</sup>.
- 2- The crime must be an offence, for the issuance of the penalty warrant, the act must also constitute an offense, which is punishable by a fine that does not exceed three thousand Dirhams. The aforementioned is also the subject of the Attorney-General's Decree and set out in the table in Article (3) of the decree of the Attorney-General, such as the contraventions contained in the Federal law on the Entry and Residence of Foreigners and its amendments including staying in the country illegally for a period not exceeding 90 days, and the fine is 100 Dirhams. As it is stated in the Federal Law on Road Traffic and its amendments<sup>22</sup> including the failure to stop without a reasonable excuse in the event of a traffic accident with a fine of 2,000 UAE Dirhams. The legislature has excluded the application of the penalty warrant in the crimes of punishable penalties, retaliation, blood money, crimes against the safety of the state and its interests. It has also excluded the crimes influencing and offending the judiciary and disrupting the judicial proceedings, the crimes for which deportation from the state has to be ordered, and the ones for which the penalty has not been imposed<sup>23</sup>.

### **The Third Subsection: Penalty- related Conditions**

For the penalty warrant to be issued, the penalty must be a fine, provided that it is not greater than half of its maximum, in addition to the supplementary punishments and fees.

#### **First: The Fine**

The penalty warrant contains only the fine penalty as an original penalty, which is commonly agreed by many laws adopting the penalty warrant, meaning that a liberty-restricting penalty such as imprisonment may not entail a penalty warrant, as is the case with the Kuwaiti law, Article (148) of Criminal Procedures. The fine is, by definition, obligating the convicted person to pay the Treasury of State an amount of money, to be estimated by the judicial judgment, for an offence he has committed<sup>24</sup>.

#### **Second: Supplementary Punishments**

According to the UAE legislature, a member of the public prosecution may issue a decision, determined by the Attorney-General, on misdemeanors and contraventions, as well as fine, supplementary penalties and fees<sup>25</sup>. With regard to supplementary penalties, this is incompatible with the nature of the offence, as those penalties are imposed only in the case of a sentence of detention or imprisonment<sup>26</sup>. However, it is understood from the above-mentioned text that the prosecutor is entitled to a supplementary penalty even in terms of confiscation as well as fine,

although confiscation is excluded from the contraventions. Confiscation<sup>27</sup> is defined as "the expropriation of property related to a crime committed or is feared to be committed, and adding it to the property of the state without compensation, based on a judgment issued by the criminal justice"<sup>28</sup>.

### **Executive Power of the Penalty Warrant and its Authenticity**

In this section, the study discusses the executive power of the penalty warrant mentioned in the first sub-section and the authority of the penalty warrant over the criminal and civil courts in the second subsection.

#### **The First Subsection: Executive Power of the Penalty warrant**

The criminal lawsuit is terminated with a final judgment of the issue, so that the criminal lawsuit may not be filed again before courts in the name of the same litigants, at the same venue, and for the same reasons, whether the Court found the suitors guilty or not guilty, based on Article (268)<sup>29</sup> of the Federal Criminal Procedures Law, which provides that the criminal lawsuit as well as its pertinent facts terminates for the accused with the issue of an explicit guilty or not guilty sentence. If such sentence is issued in terms of the criminal lawsuit, it may not be re-tried except through duly appealing against the sentence using legal means. In addition, Article (90)<sup>30</sup> of the Federal Penal Law refers to this meaning in a different way, which allows the accused to be re-tried for a criminal offence connected with another one, by prosecuting the accused for a more serious of the two crimes if he had been prosecuted for the lighter crime. It states that if the perpetrator, according to the case stated in Article (88)<sup>31</sup> of the Federal Penal Law, has been tried for the lesser crime, then he must stand trial for the higher penalty crime, in which case the court shall order the execution of the sentence imposed in the last judgement and deduct the previous served sentence. That applies to the penal provisions. As for the penalty warrant's handling of the criminal lawsuit, the legislature entitles the Attorney-General to terminate it this way so that the penalty warrant acquires enforceability and acquires executive power, and this can be achieved in one of these cases:

#### **The First Case**

In the event of execution by the convict of the penalty warrant by his payment of the fine decided thereto. In the light of Article (340)<sup>32</sup> of the Federal Criminal Procedures Law, the penalty warrant shall be final and not be objectionable in the event of its execution by paying the fine imposed thereby, which indicates the convict's approval of the penalties being imposed against him, and his willingness to implement them. Accordingly, the penalty warrant becomes final and enforceable thus possessing the power of the authenticity of such enforceable matter<sup>33</sup>.

#### **Default on the Time Limit for Objecting to the Penalty Warrant**

As Article (340)<sup>34</sup> of the Federal Criminal Procedures Law also provides that the penalty warrant shall be final and not be objectionable if the legal one-week objection period expires which is contained in Article (339) of the Federal Criminal Procedures Law. If the objection is submitted after this period, it will be dismissed in form for being submitted beyond the statutory period.

Subsequently, a question arises here, "What if an objection is made within the statutory period?" The answer is, it follows from the objection that a penalty warrant becomes null and void, which requires the acting and proceeding with the criminal lawsuit following proper procedure as applicable, and the court is not bound by the sentence passed by the public prosecution. It may increase the penalty, which is supported by the Court of Cassation's discretion in Lawsuit No. 16/2021<sup>35</sup>, considering that the objection authorizes the concerned court to pass a heavier sentence against the accused than the original, contrary to the general applicable rule in the modes of appeal, which holds that a person should not be harmed for the appeal he makes.

### **The Second Subsection: The Penalty Warrant Authenticity**

There is no doubt that the authenticity of a penalty warrant is consisted in the acquisition of the power of a penalty warrant, which results in the termination of a criminal lawsuit so that no action can be taken to review the decision on the penalty warrant<sup>36</sup>. In accordance with the provisions of Article 341<sup>37</sup> of the Laws of Criminal Procedure, and in view of the authenticity of the penalty warrant in the subject matter of a criminal lawsuit, the penalty warrant is invoked for the case parties and the issuing authority of the penalty warrant. Subsequently, the penalty warrant has no authority before the civil courts. That is what is mentioned below.

1. Authenticity of the penalty warrant towards the case parties, meaning that the accused cannot be tried again for the case in which the penalty warrant was issued. A penalty warrant does not acquire the authenticity of its parties unless the case changes and is different in one of its physical elements. As in the case of multiple offenses, a penalty warrant for one of these crimes does not prevent the accused from being tried for other crimes<sup>38</sup>. This is consistent with the nature and characteristics of the penalty warrant.
2. Authenticity of the penalty warrant towards the issuing authority, the fact that the penalty warrant acquires the power of the adjudicated matter prohibits the case from being heard again by the issuing authority. The authoritative defense of the subject matter is considered a public order and can be upheld in all investigative, trial, and appeal roles.
3. The authenticity of penalty warrant towards civil courts, having Article (1/341) read, he study finds no objection to filing a civil right claim before the public prosecution on the basis of Article (22) of the Laws of Criminal Procedure, which stipulates that, "Who he has suffered direct personal harm from the crime may claim civil rights before the accused during gathering the evidence, the conduct of the investigation, or before the court hearing the criminal lawsuit whatever state it was in, and until the proceedings have been closed and not accepted by the court of appeal." The public prosecution has no right to decide on the civil claim with the penalty warrant for the collapse of its jurisdiction in that aspect. Whereas the authority of the public prosecution is to investigate and indict, not to rule on a criminal lawsuit. The civil prosecutor may then apply to the competent civil court to claim his rights, whatever the result of the penalty warrant is.

In the second paragraph of Article (341), the determination of the penalty warrant on the subject matter of the criminal lawsuit does not have authenticity before the civil courts<sup>39</sup>. According to the researcher, a penalty warrant must have authenticity before the civil courts in order for the injured to be able to fulfill his right before the civil courts. Given that the criminal lawsuit is lapsed by it, as are other criminal judgements handed down by the criminal courts, which are required to terminate the criminal lawsuit.

### **Problem Carrying out a Criminal Lawsuit**

Article (342)<sup>40</sup> of the Federal Criminal Procedure Law stipulates the problematic issue. The problematic issue is defined as an alert to the accused to execute the penalty warrant made against

him in contravention of the law either for contravention in its issuance procedures or for its issuance to a non-accused. Article (342) states, "The final penalty warrant shall be carried out in accordance with the rules established in this chapter. The accused or his attorney may take into account the execution of the warrant in the following two cases:

1. If the warrant is made contrary to the procedures provided for in this chapter.
2. If it is issued to a non-accused.

The problematic issue is submitted to the public prosecution, and it must, in all cases, refer it within seven days to the misdemeanor court competent to hear the lawsuit for a decree without pleading, unless it considers that it cannot be adjudicated in its case or without investigation or hearing. It shall set a day for the consideration of the meant problem in accordance with normal procedure. The complainant is assigned to attend and the court decides on the problematic issue after hearing from the public prosecution either by refusing it and continuing to its execution or by accepting it. Accordingly, the order shall be null and void and the court shall refer the case records to the public prosecution for disposal. There is no doubt that the problematic issue upon the execution of a penalty warrant is important in view of the failure to apply the modes of appeal against the penalty warrant system. Where the problematic issue in its execution become the means to correct legal and objective blunders, in which the partial warrant may occur.

### **Cases of the Problematic Issue in Penalty Warrant Execution**

One of the most significant cases of a penalty warrant problematic execution is actually embodied in the accused arguing that the warrant has not yet become enforceable, and that its execution still lacks the basis. However, the determination of the cases under which it may be difficult to execute the penalty warrant was not identical in the laws that approved the problematic issue, so it is found that these laws presented lawsuits, to name but a few. The legislator of course, supports this attitude, as it is very difficult to account for all the probable cause of the problematic issue in the execution of the penalty warrant<sup>41</sup>. Accordingly, it can be said that the problematic issues involved in the execution of penalty warrant, as stipulated in Article (342)<sup>42</sup> of the Code of Criminal Procedure states in the following two cases:

In the first case, if the warrant is issued in contravention of the procedures provided for by the law, it may be invoked as a decrease in one of the statements required by the legislator in the form of the penalty warrant as set out in Article (336). Under Article 2/342, paragraph one, "If the order is made contrary to the procedures provided for in this chapter." By referring to Article (336)<sup>43</sup> of the Federal Criminal Procedures Law, the legislator has defined the formal statements that the penalty warrant must include in order for it to be valid, which are essential statements that, in case of their failure or omission, the penalty warrant shall be null and void. It is quite different from the language of the penalty warrant, for which the legislator did not establish a particular form but rather authorized the public prosecution to determine it in light of the decree and instructions issued by the Attorney-General. The warrant is valid in any form, provided that it contains the preceding statements.

The second case is where the order is made against a non-accused person, applying the rule of the person of the penalty as stipulated in Article (342/2) "If the order is made by a non-accused person."

With reference to Article (333), it is believed that the federal legislature has established the penalty warrant that covers offences such as misdemeanor and contraventions which are punishable



by a fine, or imprisonment and a fine. The legislator has restricted this system to a limited range of crimes, for which it has been established in practice that the accused are not keen to follow the proceedings and are not interested in attending the hearings on time. Especially, since the punishment prescribed for these crimes is not severe. The UAE legislator has addressed the duties of judicial enforcement officers by ordering the accused to attend the hearing of the penalty warrant. According to Article (338/1), "Judicial control officers must inform the accused of..." The accused is also required to be present at the date of presenting the file to the public prosecution ... " If the accused is absent on the date the file is presented, then he will be notified of the penalty warrant issued in his absence.

It is noted that the UAE legislator stipulated that the accused must be notified of the penalty warrant if it was issued in his absence. Based on Article (338), the legislator authorized the issuance of a penalty warrant in the absence of the accused. The said Article stipulated, "Public prosecutions may issue a penalty warrant if he is not present. The accused shall also be informed of the penalty warrant, as amended, if it is issued in his absence." Article (2/338) provides that "a penalty warrant issued against him, as amended, shall also be declared if it has been issued in his absence." The accused shall be notified of the penalty warrant according to the procedures stipulated in the Civil Procedures Law in accordance with Articles (5-10 civil procedures)<sup>44</sup> as stipulated.

The accused, in whose absence, a penalty warrant was issued, is supposed to be informed about the two matters stated below:

1. If the accused proceeds to execute the order as soon as it is made public, the penalty warrant becomes final and the feud ends.
2. The accused must object on time and must submit his objection to public prosecutions within 7 days. Such an objection shall deem the penalty warrant void, and shall proceed and act in accordance with the procedures established by law in accordance with Article (1/339).

### **Procedures Followed in the Problematic Issue**

In order to present the problematic issue, it must be done in a written form, explaining the reasons and cases on which it is based, and indeed this requirement is considered a factor in the overall criminal lawsuit. Writing as a fundamental form of proof leads to the absence of the procedure itself, which is problematic only by this procedure, but this does not prevent the execution problem from being expressed verbally to the executor and proved in the execution record<sup>45</sup>. Of course, once the problematic issue has been submitted, it is only by order of the competent court that it is necessary to suspend the execution of the made order since it is up to the executive authority of the penal judge to decide on the matter. He may reject the request made to him after having it considered. Rejection shall be entailed, as the penalty warrant continues to be enforced because it has become final and enforceable.

It should be noted that postponing the warrant execution due to the problematic issues is an interim measure depending on the Court Decree when it considers the problematic issue. Either the court upholds the provisions of the penalty warrant, which results in the continued execution of the penalty warrant, or it does not support it making a contrary decision, and then the suspension of the provisional execution becomes a final stay of execution. It can therefore be argued that the post-problematic application of the penalty warrant is only in two cases:

- The case of rejecting the problematic issue application submitted to the misdemeanor court.

- The case of settlement of the problem, by confirming what was stated in the issued penalty warrant.

### **Adjudicating upon the Controversial Issue**

It has been noticed that the misdemeanor court principally decides on the problematic issue in the penalty warrant without pleading, based on the provision of Article (342)<sup>46</sup> entitled "Procedures". An exception to this, according to Article (342), is the inability of the court to adjudicate such controversial issue as is, thus the court may consider it under normal procedures while the concerned person is told to attend. The said Article provides that, "... Unless it deems it unlikely to be adjudicated in its present condition or without investigation or pleading, we shall set a day for examining the problem in the light of normal procedures, and the concerned person is required to attend ..."

### **Impact of the Court's Adjudication on the Writ Filed against the Penalty Warrant**

With a review of Article (342), which provides that "... the Court shall decide on the problematic issue after listening to the Public Prosecution ...," we shall at this point go into three cases:

#### **The First Case**

Is to disallow the filed writ which results in continuing to carry out the penal warrant, "either by refusing it and continuing the execution...", or

#### **The second case**

Is to accept the filed writ, and consequently dropping the warrant, then referring the case to the public prosecution for disposal, as it has the powers to investigate and indict the case under discussion. The court acts in the criminal lawsuit either by contenting itself with the conclusion it has reached, closing it and deciding that it may not be filed, or by going ahead with the criminal lawsuit using ordinary procedures and by bringing the accused before the competent misdemeanor court, or accept it, and consequently drop the penalty warrant and consider it null and void, then the court refers the case to the public prosecution for disposal.

#### **The Third Case**

The decree of the court regarding the problematic issue is considered final and unappealable, according to Article 4/342, and the court's decree with respect to the problematic issue is not subject to appeal.

### **CONCLUSION**

Following a review of the issue of the penalty warrant, this system turned out to be highly important due to its practicable merits that serve justice and generate, when applied, great benefits for the judiciary and individuals, as a method based on expediting and simplifying the ending of criminal litigation leading to a more efficient criminal justice, and the extent of significance that

need to be attached to it in terms of legislation and jurisprudence, until it achieves its aspired objectives. The study has therefore reached the following conclusions:

- For the purpose of a speedy adjudication on criminal lawsuits, the penalty warrant came into existence as a result of the enormity of the delinquency cases, and to settle disputes related to minor offences, where the order related to the criminal lawsuit is issued on examining its documents. So, the scope of applying the penalty warrant in crimes and punishment was the imposed penalty, *i.e.*, imprisonment and fining. A penalty warrant has no authority before civil courts. It is a judicial order issued by the Attorney-General or a member of the Public Prosecution as one of the criminal lawsuit's alternatives.
- A penalty warrant has excluded crimes related to punishable penalties, retaliation, blood money crimes, and crimes against state's safety, interests and reputation; obstruction of the legal proceedings; as well as those crimes for which the law requires that the state must impose the penalty of banishment.

### **RECOMMENDATIONS**

Based on the foregoing, the study establishes the following suggestions:

#### **First**

Providing that the penalty warrant shall be authoritative before the civil courts. Providing that the penalty warrant be an optional procedure initiated by the public prosecution, and could be excluded in spite of it being expressly provided for. The researcher therefore recommends that adopting this procedure should be compulsory, the same way that the Egyptian legislature did regarding the penalty warrant, because this rule is in compliance with most objectives of this system, which are mainly to speed up adjudication on minor lawsuits and simplifying their procedures with a view to relieve the courts' workload.

#### **Second**

Granting the Attorney-General or public prosecution's member the discretion to assess the penalty associated with the penalty warrant, with the ruling judge only giving his certification on ensuring that the accused had free will and was not under duress, noting that this never infringes on the independence of the public prosecution or the impartiality of the criminal judge.

#### **Third**

To provide that the penalty shall not be aggravated when the accused objects to the penalty warrant, in line with the general legal rule of not harming the appellant merely for his appeal.

#### **Fourth**

Expanding the crimes covered by the penalty warrant even more with the aim of relieving the courts' workload.

**Fifth**

Providing possibility of the judge granting a judgement of acquittal.

**Sixth**

The Jordanian legislator should follow the Emirati and Egyptian example by adopting their penalty warrant system in order to relieve the courts' workload, as being among minor lawsuits.

**DECLARATION OF INTEREST****Competing Interest**

The author declares no competing interest.

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**FOOTNOTE REFERENCES**

<sup>1</sup> Article (333) of the federal procedures law.

<sup>2</sup> Articles (323),(330) of the Egyptian law of criminal procedure.

<sup>3</sup> Articles 524-528 of the French criminal procedure code.

<sup>4</sup> Mahmoud Nageeb Hosni, explanation of the criminal procedure law of 1983, 957.

<sup>5</sup> Ahmed Fathy Sorour, protection of constitutional rights and freedoms, Dar Al-Shorouk, Cairo 2000 P.No. 281 N, referred to by Fatihah Qourari, UAE Association Conference.

<sup>6</sup> Articles (194),(199) of the Jordanian code of criminal procedure.

<sup>7</sup> This term is made up of two syllables, "Straf," which means criminal and, "beffhlen," which means order referred to by Medhat Muhammad Ibrahim, Penalty warrant *Dar Al-Nahda Al-Arabiya*, First Edition 2001, 50.

<sup>8</sup> Ramses Behnam, criminal procedures in rooting and analysis, Al-Maaref Establishment, Alexandria, 1984, 713.

<sup>9</sup> Article (333) of the federal penal procedures and its amendments related to the penalty warrant.

<sup>10</sup> Jamal Ibrahim Abdel Mohsen. Penalty warrant and its field of applications, Dar Al-Halabi Publications, First Edition 2011, 17

<sup>11</sup> Jamal Ibrahim Mohsen. The penalty warrant and its fields of application, Ibid,26.

<sup>12</sup> Articles (158) and (338) of the federal criminal procedure law.

<sup>13</sup> Articles (160) and (388) of federal laws of criminal procedures and Article 50 of law 21 of 1973

<sup>14</sup> Jamal Ibrahim Mohsen. Federal laws of criminal procedures and its fields of application, Ibid. 26.

<sup>15</sup> Articles (229) and (339) of the Federal Laws of Criminal Procedures.

<sup>16</sup> Article (332) of the Federal Laws of Criminal Procedures.

<sup>17</sup> Articles (337) and (344) of the Federal Laws of Criminal Procedures.

<sup>18</sup> Article (333) of the Federal Criminal Procedures Law.

<sup>19</sup> Article (3) of the Public Prosecutor's Decree No. (119) of 2010.

<sup>20</sup> Articles 372/1, 373/1 and 374/1/2 of the Federal Penal Law.

<sup>21</sup> The Jordanian criminal procedure law according to its latest amendments in 2018 and the Egyptian criminal procedure law.

<sup>22</sup> Articles (1),(2), (21/1) (2/3) and (36) of federal law no. (6) Of 1973 concerning the entry and residence of foreigners

and its amendments as well as art. 50, 51, 52/1/2, 56 of federal law no. (21) of 1973 concerning Road Traffic and its amendments.

<sup>23</sup> Article (334) of the federal laws of criminal procedure.

<sup>24</sup> Mohamed Al-Sayed, (Al-Wajeez). A brief explanation of the general penal code, 2<sup>nd</sup> Edition (2018). Library of Dar Alafaq Almoshreqa, 247.

<sup>25</sup> Article (335) of the code of criminal procedure.

<sup>26</sup> Articles (80),(81) of the federal penal code.

<sup>27</sup> Article (82) of the federal general penal code.

<sup>28</sup> Ali Fadel Hassan. The theory of confiscation in criminal law. Cairo University thesis 1973, 73.

<sup>29</sup> Article 268 of the federal laws of criminal procedure.

<sup>30</sup> Article 90 of the federal penal code.

<sup>31</sup> Article 88 of the federal penal code.

<sup>32</sup> Article 340 of the federal criminal procedure law.

<sup>33</sup> Yussur Anwar. Criminal procedure 6.7. Lectures given to students of the diploma in criminal law-Faculty of law, referred to by Jamal Ibrahim Abdel Mohsen.

<sup>34</sup> Article 340 of the federal criminal procedure law.

<sup>35</sup> Decree No. 16/2021, Abu Dhabi Cassation Prosecution,

<sup>36</sup> Jamal Ibrahim Abdel Mohsen. penalty warrant and its fields. Ibid., 232

<sup>37</sup> Article (341) of the federal laws of criminal procedure.

<sup>38</sup> Mohammed Eid Ghraib. The judge's freedom of certainty and its effect in the causing of penal sentences. Alexandria, 1988 Edition, 18

<sup>39</sup> Article (341) of the federal laws of criminal procedure.

<sup>40</sup> Article (342) of the criminal procedures law promulgated the federal law.

<sup>41</sup> Ibraheem Medhat Mohammed Abdulaziz, Trial laws and modes of appeal against criminal judgments, Dat, Dar Elsha'b Press, Tanta, 2001, 344'

<sup>42</sup> Article (342) of the federal laws of criminal procedure.

<sup>43</sup> Provision of article (336) of the federal criminal procedure law.

<sup>44</sup> Article 5 of the civil procedures law in the UAE.

<sup>45</sup> Ahmed Hashish, Al-Wajeez in the Forced Execution, Dar Al-Shaab Press, Tanta, 2000, p. 488

<sup>46</sup> Article 342 of the federal criminal procedures laws.

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