

ELSA Legal Debates - Model Case

Fines should depend on the income of the offender

Fines are the most frequently used criminal sanctions, the use of which has nowadays expanded. They present several advantages, increasing their potential as penal sanctions. In Europe, fines are the most commonly imposed sentence for most crimes and are often an alternative to imprisonment.

Majority of jurisdictions with a common law tradition have embraced a system in which fines are regulated in flat rates defined by the type of offence sanctioned. One example of a country implementing flat rate fines is the United States. Offenders in the US face the same financial penalties, without regard to their income. Furthermore, some laws even prohibit taking a person's financial means in consideration when assessing the exact amount of a fine. While the rates are fixed, courts still have some discretion in setting fines, which are then restricted by mandatory minimum and maximum penalties.

Australia is another example of a legal system where the circumstances of the financially disadvantaged offender are taken into account in the imposition of a reduced fine, but aren't a determining factor.

Equal treatment in these fining systems is realised through the sanctioning of an economically hindered offender with a reduced fine.

The restriction of minimum and maximum penalties remains in most legal systems even when including income as a decisive factor to determining the size of the financial sanction. This is considered as standard practice, as it is directly derived from the rule of law.

Some legal systems, starting with Finland in 1921, opted for income based sanctioning - using day fines. The premise of this system is that fines should be proportionate to the income of the offender. This essentially has offenders with different economic status committing the same offence, pay the same portion of their wealth but not the same amount of money. A day fine is a unit of payment that, above a minimum fine, is based on the offender's daily income. This income-based fining system is currently used in Argentina, Colombia, Austria, France, Germany and Sweden; subject to differences in other segments of sentencing. The focus of regulating fines in this manner is on deterring both the rich and the poor from committing crimes equally.

The most popular case of income based sanctioning is a Swiss case, where the court took into account the man's history of similar offenses, the high speed with which he drove through a small village (90 km/h, nearly twice the 50 km/h limit) and his estimated personal wealth of over \$20 million - finally setting the fine at 260.000,00 EUR; which sparked a debate among those in favour of flat rate fines - and those promoting income-proportionate fines.

The appeal of setting fines proportionate to the offender's income was widely recognized in many European countries, especially among groups advocating for equality and non-discrimination the criminal justice system.

Nonetheless, there are still many who argue against income based fines, pointing out the challenges of establishing one's income accurately and its value as a determining factor when imposing this penalty.