



Research Article

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Unraveling the Intricacies of Implementing Judicial Pardon within UAE Legislation

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Abstract

This study delves into the utilization of judicial pardon within the framework of Article 152 of the UAE Federal Law on Crimes and Penalties, serving as an alternative to short-term prison sentences. The examination of this system reveals a range of organizational and judicial challenges inherent in its implementation, stemming from the existing gaps in the provisions of Article 152. The research investigates the efficacy of judicial pardon for both the individual offender and broader society. The conditions and stipulations outlined in Article 152 are scrutinized for a comprehensive understanding, encompassing elements relevant to both the offender and the committed offense. Furthermore, the study evaluates the judiciary's role in dispensing pardons to culpable individuals, leading to the cessation of legal and judicial prosecution against the offender. This study is especially significant as it marks a pioneering effort within the Emirati legal context, underscoring its valuable contribution to the future enhancement of the judicial pardon system. Utilizing a descriptive and analytical methodology, this study embarks on a jurisprudential and legislative inquiry. It examines legal regulations and judicial rulings to derive suitable resolutions for the identified challenges. The research draws from primary and secondary sources, including case law, statutory provisions, legal literature, and scholarly publications. Ultimately, the study culminates in a collection of outcomes and recommendations that advocate for objective and procedural remedies to enhance the implementation of this system.

Keywords: Alternatives to Punishment, Judicial Pardon, Legal Requirements, Substantive and Procedural Challenges, UAE Legal System

1. Introduction

The concept of judicial pardon stands as a multifaceted legal principle at the crossroads of criminal individualization, the nature of the offense committed, the characteristics of the offender, and the corresponding penalty. Its intricacies are woven into the fabric of conflicting theories, which collectively shape its legislative underpinnings. Traditionally, prevailing schools of thought underscored the significance of administering penalties to wrongdoers, aligning with the paradigm of the "exclusionary function of punishment. According to this notion, society's battle against criminality necessitates the isolation of transgressors from the societal framework. Within the realm of legal practices, the judicial pardon emerges as a quintessential recourse within the legal framework of the United Arab Emirates (UAE), specifically within its legislation on crimes and penalties. It not only serves to prevent the dissolution of families but also safeguards the labor force and sustenance for those who have been convicted.

The UAE Federal Law on Crimes and Penalties meticulously outlines three distinct categories of pardons: exclusive pardon, special pardon, and judicial pardon. Among these, the judicial pardon holds particular prominence. This form of clemency vests the judge with the discretionary power to extend forgiveness to an offender for minor transgressions, subject to specific conditions. These conditions encompass factors such as the age of the offender, the absence of prior convictions, and the nature of the misdemeanor, including aspects like mutual defamation, physical altercations, or minor assault. The execution of a judicial pardon pivots on a delicate interplay of factors, including the age of the offender, the absence of prior criminal records, and the gravity of the offense committed. Significantly, the exclusive authority vested in the judge to wield the power of pardon underscores the pivotal role played by the judiciary in this context, precluding any involvement of the public prosecution in this prerogative.

Integral to the fabric of restorative justice in the United Arab Emirates, the concept of judicial pardon finds its manifestation solely within the domain of judicial proceedings. This distinct discretion resides exclusively with judges, delineating its exclusion from the purview of public prosecutions. Even minor offenses can be rectified through the channel of judicial pardon without necessitating formal court proceedings. Section 152 of the UAE's Law on Crimes and Penalties delineates the latitude accorded to judges, allowing them to forgo the imposition of punishment under specific conditions. The present study embarks on the task of bridging a critical gap in existing literature by delving into the intricacies of judicial pardon within the UAE's legal landscape, a fact that stands apart from its application in analogous jurisdictions such as Kuwait, Algeria, and the United Kingdom.

The current study focuses on evaluating the effectiveness of the judicial pardon system as an alternative to the traditional punitive system within the United Arab Emirates. It assesses whether the legal provisions that govern this system can successfully fulfill the primary objectives of punishment, including general and specific deterrence, the administration of criminal justice, rehabilitation, and the reintegration of convicted individuals into society.

To address the study's central question, the following subsidiary inquiries are introduced:

- What does the term 'judicial pardon system' encompass in UAE legislation, and what are the boundaries and applicability within the UAE's legal framework?
- What are the legal prerequisites for the implementation of the judicial pardon system concerning the offender and the prescribed penalty for their crime?
- What implications does the judicial pardon system have, and what challenges are associated with future criminal behavior?
- What are the significant organizational and judicial obstacles to executing the judicial pardon system in the United Arab Emirates?

This study carries notable significance by pioneering within the Emirati legal framework and underscoring its substantial contribution to the prospective refinement of the judicial pardon system.

By engaging in an in-depth examination of the practice of judicial pardon within the UAE, this study contributes to the understanding of its efficacy within the ambit of court proceedings while also scrutinizing the competence of the public prosecution in pre-trial criminal case determinations. Employing a non-doctrinal research approach, the study integrates descriptive, statutory, analytical, and comparative methods. Through this comprehensive lens, the study endeavors to shed light on the nuanced operation of judicial pardon in the UAE's criminal justice framework, unraveling its distinctive characteristics within a broader international context.

This study adopts a descriptive and analytical methodology, undertaking a comprehensive inquiry into jurisprudential and legislative aspects. It critically assesses legal regulations and judicial precedents. It utilizes primary and secondary sources, including case law, statutes, legal literature, and scholarly publications. Data collection adheres to established legal research methodologies, encompassing primary documents such as legal codes and legislative opinions. It also involves an extensive review of secondary sources, including reputable law journals and online legal databases. The analysis is conducted using the 'content analysis method.'

2. Judicial Pardon Application in UAE Legislation

One of the most important general features of the judicial pardon under the UAE Federal Law on Crimes and Penalties of 2021 is that it is a traditional alternative to short freedom-depriving punishment with an objective, indirect, and punitive nature (Ishaq, 1991, pp. 136–137). If any of the considerations stipulated in paragraphs (1) and (2) of Article 152 of this law are fulfilled, the judge may order that the offender be exempted from punishment. The judicial pardon can be applied at a time prior to the conviction judgment, which means that its applicability requires not issuing the guilty verdict against the offender, and instead of issuing a verdict of conviction and imposing punishment, punishment is excluded (Rabah, 2003, p. 223).

The law limits the application of judicial pardon to a specific type of crime, namely misdemeanors, not felonies. These crimes include the misdemeanor of insulting and reciprocal beating and the misdemeanor of petty assault, which is followed by the victim's waiver of the person's right to complain. In contrast to the judicial pardon models stipulated in the Arab comparative legislation, the legislative philosophy of judicial pardon in the Emeriti Law is not based on the purposes of revealing crimes or providing information about their perpetrators, but on the social stigma, the negatives of applying freedom-depriving punishment, and the disadvantages of mixing with prisoners.

Moreover, the concept of judicial pardon demonstrates notable distinctions when contrasted with analogous pardoning systems. Unlike the encompassing pardon delineated in Section (148) of the Federal Law on Crimes and Penalties, the judicial pardon manifests itself through the deliberation of the competent presiding judge amid the proceedings, specifically pertaining to select categories of misdemeanors. This prerogative is extended to a specific cohort of offenders, confined within the age bracket of 18–21 years. Noteworthy is the scope of its influence, which pertains exclusively to the punitive aspect rather than the criminal act itself. In sharp contrast, a comprehensive pardon is enacted under the purview of legislative authority, abiding by established pardon legislation. The timing of its bestowal lacks a predefined framework, spanning the spectrum from pre-conviction stages to post-verdict deliberations subsequent to the commission of the offense. The ramifications of a comprehensive pardon encompass both the criminal deed and the attendant punishment, thereby rescinding the act's decriminalization and expunging the associated penalty (Idris, 2015, p. 116).

Also, the judicial pardon differs from the special pardon, which is stipulated in Article 150 of the Federal Law on Crimes and Penalties (Al-Akaileh, 2021, pp. 230–231). The special pardon is issued by decree and leads to the partial or total dropping of the criminal penalty, or its replacement with the lenient penalty; its effects are extended only to the original penalty; and it does not affect the ancillary or subsidiary penalties or precautionary measures (Ayoubi, 2021, pp. 400–401). The similarities between judicial pardon and special pardon are that both are of a personal nature, but

they differ in terms of the scope of application (Mugni, 2019). The special pardon covers felonies and misdemeanors, while the judicial pardon covers misdemeanors without felonies. Also, each of them differs in terms of timing, as the special pardon is issued after the guilty verdict becomes final, while the judicial pardon is granted before the guilty verdict is issued and during the trial stage (Mugni, 2019).

Judicial pardon is one of the independent legal systems, the most important in practice, and has unique characteristics compared with other similar legal systems, such as a comprehensive pardon and a special pardon (Al-Rifai, 1994, p. 386). In UAE law, judicial pardon is permissible and depends on the judge's rational conviction of its benefit to society and individuals. The judge may refuse punishment if the law's requirements are met and the expediency of imposing punishment is considered. This decision is subject to the judge's discretion and convictions (Salem & Shaker, 2013).

The second, judicial pardon, constitutes a punitive mechanism with a distinct criminal essence, governed by the parameters of the Federal Law on Crimes and Penalties and functioning within the framework of established legal norms. This mechanism involves the suspension of punitive measures and necessitates adherence to a specific legal stipulation as mandated by the law (Al-Jeraisy, 2021, p. 2923). The concept of judicial pardon operates as a punitive strategy intended to supplant the primary sanction, particularly imprisonment. The specific rules and criteria governing judicial pardon are detailed in paragraphs (1) and (2) of Section 152 of the Federal Law on Crimes and Penalties. It is crucial to underscore that the utilization of judicial pardon does not alter the intrinsic criminal essence of the perpetrated act. Instead, its impact is restricted solely to the punitive aspect, resulting in its nullification and thereby culminating in the relevant legal and judicial proceedings against the wrongdoer.

However, unlike the conditional release and sentence suspension systems, the law does not suspend the continuation of applying the judicial pardon on conditions that lead to its cancellation in the event of a violation, but Section 152 of the law includes a threatening condition that extends its effect into the future; if the offender commits a crime in the future, then the offender will not benefit from having a judicial pardon again.

In contrast to the conditional release and sentence suspension mechanisms, the legal framework does not hinge upon the suspension of the implementation of judicial pardon based on conditions that could lead to its revocation upon violation (Mugni, 2019). However, Section 152 of the law introduces a cautionary provision that extends the implications of judicial pardon beyond the immediate context. Specifically, if the offender commits a subsequent crime, they will forfeit the privilege of benefiting from judicial pardon once more (Al-Khraisha, 2013, pp. 320).

2.1 Offender Considerations and Implementation Challenges

Article 152, paragraph 1, of the Federal Law on Crimes and Penalties outlines the conditions for the implementation of the judicial pardon system. This provision specifies that the offender must have been under the age of 21 at the time of committing the crime and should not have any prior convictions. From this stipulation, it can be inferred that the essence of the judicial pardon revolves around the offender's criminal capacity and their absence of prior criminal convictions.

The judge has discretionary power to reject or grant a pardon request, with the obligation to provide justifications for granting a pardon but not for rejecting one. This requirement for justification stems from the principle that established evidence of a crime should generally lead to conviction and punishment (Rafiq, 2012, pp. 265-266). However, judicial pardon deviates from this norm, making justification essential to validating the decision. A lack of justification undermines the legality of the pardon. Therefore, these considerations can be summarized as follows:

- a. The presiding trial judge has discretionary authority to accept or reject a pardon request and cannot overturn convictions based on challenges from the offender or their legal representative. The UAE Federal Supreme Court states that a judicial pardon is a discretionary choice, contingent on the judge's judgment. The Dubai Court of Cassation

- clarifies that judgment validity is not compromised if the judge does not consider personal circumstances or leniency considerations (Hajeej, 2016, pp. 111–112).
- b. The UAE Law on Crimes and Penalties aims to address judicial selectivity by restricting pardon eligibility to misdemeanors, excluding felonies. However, judges lack the authority to extend pardon to individuals responsible for grave felonies, and their choice to grant pardon requires justification (Al Nakbi, 2019). The Court of Cassation must scrutinize the judge's decision and, if found lacking justification, annul the judicial pardon, resulting in a lack of legal and procedural validity.
 - c. Article 60 of the Law on Crimes and Penalties regulates the absence of criminal liability capacity for individuals with diminished consciousness or will during a crime. This provision contrasts with Section 152, which covers individuals who retained complete consciousness and will at the time of committing the offense (Al-Qudah, 2018, pp. 511–517).

2.2 Offense Considerations and Application Issues

The UAE's Federal Law on Crimes and Penalties mandates specific deliberations that empower the judge to grant a judicial pardon. Among these considerations, certain pertain to the nature of the crime itself. These include factors like the victim's relinquishment of personal rights, instances where multiple victims waive their rights, and the absence of any prior criminal history on the part of the offender (Article 152: 1 and 2 of the UAE Federal Law on Crimes and Penalties No. 36 of 2022). These factors can be elucidated in the following manner:

First, the nature of the offense comes into play. Article 152 underscores that eligibility for a judicial pardon is contingent upon the offense being categorized as a misdemeanor. It's important to highlight that the legal system in the UAE adheres to a tripartite classification of crimes and employs a penalty-based criterion for their categorization (Faqr and Alrousan, 2023). At their apex, felonies encompass crimes that warrant penalties such as retribution, capital punishment, life imprisonment, and temporary imprisonment (Article 29 of the UAE Federal Law on Crimes and Penalties No. 36 of 2022). Secondly, within this context, misdemeanors encapsulate various forms, including crimes entailing the payment of blood money and those subject to penalties ranging from one month to three years of imprisonment or fines exceeding ten thousand dirhams (Article 30: 1, 2, and 3 of the UAE Federal Law on Crimes and Penalties No. 36 of 2022). Lastly, the third category comprises violations that constitute offenses punishable by detention lasting between twenty-four hours and ten days, in addition to fines not exceeding ten thousand dirhams (Article 31 of the UAE Federal Law on Crimes and Penalties No. 36 of 2022). Consequently, as delineated in paragraphs (1) and (2) of Article 152, the criteria for a crime to be considered for judicial pardon necessitate it falling within the misdemeanor category. Notably, paragraph (2) of this article explicitly excludes felonies from the ambit of this mechanism, instead restricting its application to specific subcategories of minor misdemeanors. These encompass offenses like mutual insults and physical altercations, with the additional proviso that the victim consents to relinquishing their right to pursue further criminal litigation.

Secondly, another pivotal consideration pertains to the victim's renunciation of their individual entitlement in instances of minor assault offenses. Within the context of minor misdemeanors, specified as "simple assault" within Article 152, the judge reserves the authority to extend a pardon to the offender on the condition that the victim voluntarily forfeits their personal rights. This relinquishment is assessed by the judge and results in an abatement of penalties (Mugni, 2019). In such instances, the act of waiver or reconciliation halts the progression of the criminal case. Furthermore, if this waiver is secured during the trial proceedings, it culminates in the cessation of the criminal case altogether.

In this perspective, judicial pardon stands as a potent instrument in the fight against crime and the prevention of its occurrence. While criminal punishment serves a role in this regard, it may not be entirely effective in eradicating crime (Al-Zayni, 2013, p. 22). Conversely, the mechanisms of waiver

and reconciliation inherent in judicial pardon practically contribute to crime prevention (Al Nakbi, 2019). This stems from the fundamental premise that the act of a victim forgiving an offender fosters a sense of mutual understanding, purity, and reconciliation. Consequently, it can be argued that a judicial pardon rooted in the principles of waiver and reconciliation achieves outcomes that punitive measures may not. In the context of "mutual insult and beating" misdemeanors, a distinctive scenario emerges wherein the legal positions of the involved parties are intertwined. Each participant concurrently assumes the roles of both victim and offender. This unique dynamic necessitates their respective relinquishments of personal rights to address the other party. This enables the judge to exercise discretionary authority in granting pardon to both sides, forging a resolution that bridges the roles of victim and offender.

Thirdly, a significant dimension involves the prospect of refraining from future criminal acts. The application of the judicial pardon system incorporates a procedure known as "advice and guidance," which assumes a coercive character (Al Nakbi, 2019). Through this mechanism, the judge imparts admonition to the offender, cautioning them about the potential loss of pardon privileges in the event of future criminal conduct. This is perceptible in paragraph (2) of Section 152 within the Federal Law on Crimes and Penalties, which articulates that the judge, when granting a pardon, is required to provide the offender with appropriate advice and guidance, along with a distinct admonition regarding the forfeiture of pardon benefits upon engaging in subsequent criminal activities.

Moreover, it is evident that the formulation of this section reflects the influence of the reformation approach (Al-Dabian, 2015, p. 3) within the UAE legal framework. This influence is embodied in the paragraph addressing advice and guidance, which encapsulates the fundamental purpose of the judicial pardon system as a traditional alternative to incarceration. Its essence encompasses the educational, reformatory, and disciplinary elements aimed at molding, rehabilitating, and cultivating the offender.

An essential query within the scope of this study revolves around whether the UAE legal system mandates a general or specific form of criminal recidivism to impede the application of judicial pardon (Al-Mammary, 2015, p. 269). To address this inquiry, a comprehensive elucidation of the "advisement and guidance" principle, enshrined in Article 152 of the law, is required. These principals' endeavor is to caution offenders against future transgressions, warning them of the consequences of forfeiting forgiveness in the event of recidivism. Certain criminal law scholars advocate for the notion (Ali Al-Tamimi, 2021, p. 416) that what is meant by this rule is for the offender to refrain from repeating a special recidivism for all types of misdemeanors mentioned in Article 152, i.e., recidivism associated with committing a crime of the same type, which ultimately leads to the judge's reluctance to decide judicial pardon in the future.

Legal scholars contend that the judicial pardon encounters obstacles arising from both general and specific recidivism (Al-Awatur, 2008). The system's primary aim is to offer leniency to first-time offenders, and it is deemed justifiable to extend a pardon if an offender's previous criminal conduct indicates a propensity towards criminal behavior. Nevertheless, if an offender's character does not exhibit a proclivity for serious criminality, granting them a pardon might inadvertently foster future criminal activities and propagate ethical negligence (Al-Awatur, 2008). Within the context of the United Arab Emirates, it is argued that addressing recidivism through the imposition of penalties is a suitable resolution, consistent with the nation's overarching criminal policy. This approach aligns with the country's stance on matters of criminal justice.

From the analysis presented thus far, it becomes evident that it is imperative for the judge to exercise restraint in granting pardon to offenders displaying either general or specific recidivism tendencies. This precaution is crucial to effectively averting future criminal activities (Al-Kasasbeh, 2010, p. 20). Criminal penalties serve dual roles of rehabilitation and prevention, with recidivism often warranting escalated punitive measures. Nonetheless, this doesn't preclude the judge from exploring alternate avenues for convicted individuals, such as the option of sentence suspension or conditional release, which can offer rehabilitative prospects without resorting to a complete pardon

(Obaid, 1979, p. 546).

3. Offense Penalty Considerations and Application Issues

Crucial elements in criminal cases entail the scrutiny of the essential attributes of the offense, the victim's deliberate relinquishment of personal rights, the potential for recurrent instances of victim waivers, and the absence of prior criminal infractions. This can be elaborated upon as follows:

Firstly, the categorization of the offense holds great significance. As stipulated in Article 152, the possibility of receiving a judicial pardon depends primarily on the nature of the offense, specifically requiring it to be classified as a misdemeanor. Notably, the legal framework in the United Arab Emirates (UAE) employs a tripartite classification system for crimes, with the classification criteria being based on the type of punishment imposed (Ali, 2013, pp. 165–166). These classifications consist of felonies, misdemeanors, and violations. Felonies encompass crimes subject to penalties such as retribution, death, life imprisonment, and temporary imprisonment. Conversely, misdemeanors encapsulate crimes, including offenses warranting blood money compensation as well as those punishable by imprisonment ranging from one month to three years or fines exceeding ten thousand dirhams. The third category encompasses violations, which involve offenses punishable by detention spanning a period of no less than twenty-four hours and no more than ten days, accompanied by fines not exceeding ten thousand dirhams.

In light of these parameters, it is evident that both paragraph (1) and paragraph (2) of Article 152 of the legislation mandate that a crime qualifies for judicial pardon only if it corresponds to the classification of a misdemeanor. Notably, paragraph (2) of the aforementioned Article delineates a restriction, excluding felonies from the ambit of this judicial pardon system. It confines the application of this system solely to specific categories of minor misdemeanors, notably those involving insults and reciprocal assault. Furthermore, it explicitly necessitates the victim's waiver of their right to pursue criminal litigation as a precondition for the application of this system (Ali, 2013, pp. 165–166).

Secondly, the relinquishment of the victim's personal rights assumes significance, particularly in cases of minor assault misdemeanors. Within the context of offenses categorized as "simple assault," as delineated in Section 152, the presiding judge retains the authority to grant a pardon to the perpetrator provided that the victim voluntarily forgoes their personal rights. This act of waiver is meticulously weighed by the judge and consequently results in the dismissal of penalties (Al-Suhaybani, 2012, pp. 204–205). It is crucial to underscore that within this category of crime, either the victim's waiver or reconciliation serves to halt the progression of the criminal proceedings. Should such a waiver or reconciliation be achieved during the trial process, it culminates in the termination of the criminal case itself.

Article 152 of the UAE Law on Crimes and Penalties establishes a framework encompassing essential prerequisites requisite for the activation of the judicial pardon mechanism. This construct mandates that the misconduct perpetrated by the offender aligns with the characterization of a misdemeanor, thereby rendering them subject to the imposition of imprisonment as a punitive measure. Nevertheless, the practical realm reveals an array of challenges intrinsic to the implementation of the judicial pardon system in conjunction with prison sentences. Amidst these challenges, a salient concern arises from the delineation within Section 152, which confines the application of judicial pardon exclusively to misdemeanors carrying prison sentences within the range of one month to three years. This limitation, by implication, precludes the extension of judicial pardon to penalties encompassing monetary fines.

The nuanced complexities intrinsic to the viability of operationalizing the judicial pardon system can be expounded upon as follows (Articles 152, 29, 30, and 31 of the UAE Federal Law on Crimes and Penalties No. 36 of 2022):

3.1 *Penalty for Misdemeanor within Article 152*

Article 152 of the legal framework unequivocally asserts the admissibility of extending clemency to offenders in the context of misdemeanors. Notably, the term "misdemeanor" is employed in an unqualified manner within paragraph (1) of this article, thereby encompassing a comprehensive array of transgressions for which prison sentences are prescribed. Notwithstanding, a salient query surfaces: what specific duration of incarceration does the scope of judicial pardon encompass?

An examination of paragraph (1) of this article reveals an implicit circumscription, limiting the duration of imprisonment amenable to judicial pardon to a range spanning from one month to three years. This temporal bracket corresponds to the typical period of liberty deprivation associated with misdemeanors, but it refrains from extending its purview to encompass pecuniary fines. Consequently, this ambit of the judicial pardon system does not encompass penalties stipulated for felonies, such as temporary imprisonment and sentences of life incarceration (Al-Kilani, 2011).

In accordance with UAE legislation, the scope of judicial pardon exclusively pertains to prison penalties associated with misdemeanors, without encompassing penalties of temporary or life imprisonment associated with felonies. Nevertheless, an issue arises concerning prison penalties within the misdemeanor's domain. Article 152 does not explicitly delineate the precise duration of imprisonment applicable, thereby encompassing penalties spanning the range of one month to three years. This implies that the application of this judicial pardon framework extends inclusively to all grades of misdemeanors, encompassing both serious and minor offenses without any exception.

This predicament stems from the fact that Section 152 of the UAE Law on Crimes and Penalties grants judges' significant discretionary authority in the determination of judicial pardons, regardless of the prison penalties linked to misdemeanors. As a potential solution, it could be proposed to amend the provisions of this section in order to narrow down the applicability of the judicial pardon system to encompass solely minor misdemeanors, those penalized with imprisonment for a period of less than two years. This proposition is rooted in the principle that judicial pardon serves as an alternative to short-term custodial penalties, as posited by Al-Humaidi (2019, p. 27). The application of judicial pardon to misdemeanors carrying a maximum prison term exceeding two years becomes inconceivable, and the objectives of reformation and rehabilitation are not attainable. For instance, the requirement for implementing the penalty suspension system mandates that the imposed prison sentence not exceed one year.

3.2 *Extending Judicial Pardon for Dual Punishment Misdemeanors*

A facet contributing to the ambiguity surrounding the stipulations of Article 152 pertains to the confinement of judicial pardon to penalties within the realm of misdemeanors. Consequently, a pertinent query arises regarding the extent of this inclusivity: does it encompass prison penalties in isolation, or does it encompass prison penalties in conjunction with an accompanying fine? In addressing this inquiry, it is imperative to emphasize that the determination of a judicial pardon occurs concurrently with the issuance of the conviction judgment (Al-Kilani, 2011). This delineation implies that the judge, in accordance with paragraph (1) of Article 152, possesses the authority to exercise the judicial pardon prerogative across various categories of misdemeanors, irrespective of whether the penalty prescribed for these offenses encompasses imprisonment, a fine, or a combination thereof. The pivotal criterion is the judge's determination that the misdemeanor in question is subject to imprisonment.

Consequently, it is plausible to assert that the applicability of the second paragraph of this section potentially extends to encompass all variants of misdemeanors, encompassing both imprisonment and fine penalties, either individually or jointly (Akram, 1998). Notably, fines in misdemeanor cases invariably constitute an alternative penalty and not a primary punishment. Hence, if the misdemeanor solely entails a fine penalty, the bestowal of a judicial pardon to absolve the offender of the punishment is impermissible.

The scope of judicial pardon does not cover misdemeanors that are solely fined without imprisonment sentences. This limitation arises from the purpose of judicial pardon, which aims to prevent offenders from associating with criminals in prison while maintaining social cohesion. However, it doesn't exempt offenders from their financial obligation to pay fines. In essence, judicial pardon applies to misdemeanors with imprisonment, fines, or both penalties. Yet, it excludes misdemeanors from being exclusively fined. Moreover, it extends to offenders of misdemeanors with both imprisonment and optional fines, granting clemency for liberty deprivation and potential financial responsibilities (Abdul Jawad, 2006).

The Dubai Court of Cassation has clarified the scope of pardon by stating that it applies to both main and additional penalties. Additionally, the interpretation of sections (1) and (2) of Article 152 indicates that misdemeanors punishable solely with fines are not covered by this provision. This interpretation aligns with the underlying rationale for the judicial pardon, which is to prevent offenders from experiencing imprisonment.

4. Crime Punishment and Future Commitment Pledge: Implementation Challenges

The inherent ambiguities and deficiencies within Section (152), concerning the judicial pardon system, are prominently manifest in the divergent court verdicts related to its application, coupled with the nebulous nature of its legal mechanisms. Evidently, Paragraph (2) of Section 152 exemplifies this ambiguity, mandating that prior to granting a pardon, the judge must caution the offender against the prospect of not being pardoned in the event of future criminal acts. However, the pivotal inquiry arises: on what basis does the judge ascertain the offender's propensity to refrain from future offenses?

Upon scrutinizing Paragraphs (1) and (2) of Article 152, no explicit provision obligates the judge to mandate that the offender seeking exemption from punishment furnish a pledge, whether through tangible assets, personal commitment, or even without any form of bail, as a testament to their intention of eschewing future criminal conduct (Abdul Jawad, 2006).

Hence, Article 152 lacks stipulations that enforce the obligation for the offender to present a commitment to abstain from reoffending, whether in the form of a pledge or otherwise. The judge is not compelled, within the context of administering judicial pardon, to solicit a written pledge, a guarantee, or even specify the nature of the guarantor or the value of any financial assurance. Moreover, the judge does not possess the authority to impose specific conditions on the offender for a predetermined period of time.

Consequently, the section mentioned is conspicuous in its absence of directives obligating the offender to provide such pledges or conditioning the dispensation of judicial pardon upon their submission. Similarly, it does not confer upon the judge the power to impose binding conditions on the offender in the context of the judicial pardon procedure (Al-Ani, 2022, p. 198).

Within the context of the judicial pardon quandary in the UAE legislative framework, two hypotheses warrant consideration, delineated as follows:

The first hypothesis revolves around the feasibility of applying the stipulations enshrined in Articles 112 and 113 of the UAE Code of Criminal Procedure No. 35 of 1992 and its subsequent revisions. These sections pertain to the release of the accused on bail. However, it must be clarified that these provisions are inapplicable in the context of judicial pardon. The response to this inquiry is negative, as the submission of personal or financial pledges by the accused in these sections addresses a distinct matter, specifically the interim release of the accused during pretrial detention (Mustafa, 2017, p. 319).

The second hypothesis revolves around whether the court possesses the authority, when extending a pardon to an offender, to compel them to submit a pledge backed by a tangible or personal guarantee as a safeguard against future criminal acts. However, the court is not empowered to mandate the pardoned offender to furnish such a pledge, either in material assets or personal commitment, as this procedure finds no stipulation within the UAE Code of Criminal Procedure.

Moreover, such an imposition would be deemed unlawful and contradictory to the tenets of Article 152 of the UAE Law on Crimes and Penalties. This is primarily because judicial pardon operates as a conventional alternative to punitive measures.

Furthermore, the resolution to this matter is elucidated by the second paragraph of Article 152, which requires the judge, prior to bestowing a pardon, to counsel and guide the offender while cautioning them that no subsequent pardon will be extended should they reengage in criminal activities. This clause effectively settles any dispute concerning the imposition of mandatory guarantees or pledges in the context of judicial pardon proceedings.

Conversely, unlike the framework of judicial observation, which is presently not adopted under UAE law for adult crimes (Articles 15:3 and 18 of the UAE Federal Law on Juvenile Delinquents and Homeless Individuals No. 9 of 1976), the judge refrains from stipulating that the offender adheres to specific conditions over a designated timeframe. However, Article 2 of the UAE Code of Criminal Procedure introduces provisions aimed at the rehabilitation of the convicted individual as dictated by the law. This is particularly applicable in instances where the accused is not criminally liable for any category of felony or misdemeanor, coupled with considerations involving the presence of the accused's criminal record within the stipulated timeframe (Article 2:2 of the UAE Federal Law on Rehabilitation No. 36 of 1992, Article 2:2 of the UAE Federal Law on Crimes and Penalties No. 36 of 2022).

Consequently, the court has delineated that the conviction of an individual for the commission of a misdemeanor crime is precluded unless the execution of the offender's pardon has elapsed for a duration exceeding three years. In scenarios where the court deems the accused to have reoffended or when the penalty has been rendered null due to the statute of limitations, the rehabilitation period is extended to five years.

The authority of the trial judge to impose specific conditions on an offender subsequent to the issuance of a judicial pardon requires clarification. These conditions would essentially encroach upon the post-pardon freedom of the individual in question. The determination of such conditions is entrusted to legal regulations rather than being within the purview of the judge's discretionary power.

It is imperative to underscore that judicial pardon differs from other alternatives to penalties, including the suspension of penalty execution and conditional release. Unlike these alternatives, judicial pardon does not subject the offender to any behavioral or supervisory measures during the post-pardon phase. Furthermore, the enforcement of judicial pardon is immediate, without any constraints imposed by the law regarding a specific time frame. This distinguishes it from other alternative penalty systems that are governed by predefined time limits.

5. Exploring Offense Nature, Judicial Pardon Applicability, and Resolutions

In the context outlined, a range of issues arise concerning the nature of the offense and the applicability of judicial pardon. These challenges, along with potential solutions, can be addressed in the following manner:

5.1 *Judicial Pardon and Crime Prevention in the Future*

Assuming that the perpetrator, whose age does not exceed 21 years, has previously been found culpable of committing acts of misdemeanor involving indecent assault on three occasions, and subsequently, in the event of a fourth transgression, the presiding adjudicator elects to extend clemency, irrespective of the absence of documented evidence within the case dossier substantiating the aforementioned prior transgressions, it can be posited that the pronouncement of such a decision remains subject to rescission.

The legislative rationale inherent within the stipulations delineated within Article (152) is oriented towards the attainment of a societal benefit, principally characterized by the reformation

and reintegration of the transgressor. The adjudicator, in the exercise of discretion, is vested with the prerogative to extend clemency exclusively to those offenders deemed meritorious of exemption from punitive measures. This determination hinges upon the distinct considerations applicable to each individual transgression and transgressor (Abbas, 2016, pp. 279–281). Merely fulfilling the criterion of chronological youth, meaning that the offender's age at the time of the commission of the offense does not exceed 21 years, is not per se sufficient. Rather, it is incumbent upon the judge to cultivate a rational and coherent conviction that the accused is not predisposed towards recidivism. This cognitive process necessitates a logical appraisal of the circumstances in order to ascertain the potentiality of the accused's reversion to criminal behavior.

Consequently, can the presiding judge exercise discretion to grant clemency to the transgressor contingent upon subsequent or forthcoming circumstances or information? The response to this inquiry dictates that the judge is constrained to render a pardon based on the circumstances enveloping the offense and the offender at the moment of its commission rather than relying on subsequent or future events and conditions (Akram, 1998).

5.2 *Judicial Pardon Determined by Case File Facts*

The judge is under a binding obligation to ground the act of clemency upon the evidentiary findings documented within the case record (Nabih, 2008). It is impermissible for the judge to extend a pardon solely on the premise of the absence of incriminating evidence within the case dossier. In the event that the judge discerns a deficiency in the case file concerning substantiation of the perpetrator's prior criminal activities, a verdict of clemency must be withheld. The judge is prohibited from bestowing pardon upon the offender merely on the basis of the age parameter as specifically delineated in Article 152 without duly taking into account the absence of evidence corroborating the occurrence of past criminal transgressions.

In a congruent manner, it is incumbent upon the court to adhere to the stipulated considerations delineated within Article 152 with regard to the pardoning of the accused. Failure to do so would result in a judgment founded on considerations fraught with ambiguity. In a corresponding vein, the Dubai Court of Cassation has expounded that "the presiding judge is compelled to anchor the verdict of clemency upon unequivocal rationales firmly grounded in the contents of the case dossier. Otherwise, the judge may lack conviction on the premise that the transgressor will abstain from future re-offenses (Dubai Court of Cassation, Penal Decision, Appeal No. 188, 2008). Hence, it can be contended that, under such circumstances, the pronouncement of a pardon decree is susceptible to annulment due to its inherent nullity.

5.3 *Judicial Pardon Based on Past Facts*

Evidently, as specified within Article 152, the judge's issuance of a pardon to the transgressor is contingent upon antecedent circumstances encompassing both the offense and the offender at the moment of the criminal act's commission. Addressing the query concerning the judge's authority to grant a judicial pardon predicated on factors such as the victim's renunciation, reconciliation, or personal clemency, it is pertinent to elucidate that these three scenarios encapsulate post-crime circumstances (Akram, 1998). These instances stand as distinct considerations delineated within Article 152, capable of conferring the judge with the prerogative to pronounce a judicial pardon (Al-Suhaybani, 2012, pp. 206).

Is the physical presence of the accused before the court an indispensable prerequisite for the dispensation of a judicial pardon? Within the purview of paragraph 1 of Article 152 of the UAE Federal Law on Crimes and Penalties, there exists no prohibition that precludes the court from adjudicating upon a judicial pardon in the absence of the accused. In accordance with the provisions of this paragraph, the presiding judge ascertains whether the offender, whose age does not exceed twenty-one years at the juncture of the offense, has a history of prior criminal transgressions, ascertained

through documented evidence within the case proceedings.

Simultaneously, it is imperative to acknowledge that in paragraph 2 of Article 152, the law mandates the presence of the accused as an essential precondition for the determination of a judicial pardon. In instances involving adult offenses encompassing "insult," "reciprocal assault," or "simple assault," followed by the victim's renunciation of their rights, the judge retains the prerogative to bestow clemency upon the present offender. However, this dispensation is contingent upon counseling and guidance offered to the offender, wherein they are apprised that any potential future transgressions will not warrant subsequent clemency. This procedural course is exclusively admissible in scenarios where the offender is physically present during the phase of ultimate investigation, colloquially referred to as "the trial stage. (Al-Majali, 2007, p. 291). Indeed, it is aptly articulated that paragraph 2 of Article 152 has judiciously encompassed appropriate provisions. The judge's ability to ascertain the offender's genuine resolve to abstain from future criminal acts necessitates a comprehensive discourse wherein all intricacies pertaining to the crime and the contextual conditions of its perpetration are deliberated upon with the offender (Nabih, 2008). Failing to engage in such a comprehensive dialogue would hinder the judge's capacity to discern the offender's authentic sentiments of contrition and the earnest aspiration to refrain from reengaging in criminal conduct in subsequent instances.

Moreover, a definitive deduction can be drawn that the presence of the offender during the trial stage emerges as a pivotal factor governing the authenticity and legality of the judicial pardon. The absence of the offender during the decision-making process may indeed render the pardon void (Rafiq, 2016, p. 126). Furthermore, it is derived from the precepts enshrined in Section 152 that the framework of judicial pardon constitutes an alternative to the imposition of penalties in cases involving offenses committed by individuals, distinct from legal entities.

6. Examining the Implications of Judicial Pardon

6.1 Examining judicial pardon's impact on legal regulatory frameworks

The uncertainties enshrouding Article 152 extend to encompass the consequences of the judicial pardon. Specifically, there is ambiguity concerning whether the judicial pardon serves to expunge both the imposed punishment and the underlying crime or if its effect is confined solely to the annulment of the punishment while the crime persists. The mentioned section remains silent on matters concerning the aftermath of implementing the judicial pardon system. Notably, the section solely encompasses considerations pertinent to the exercise of the judge's discretionary authority in granting or withholding the pardon from the offender (Ali, 2013, p. 166).

Upon consideration of the stipulations enshrined within Article 152, the scope of judicial pardon outcomes can be delineated through two plausible hypotheses. Firstly, following the act of pardon, the offender might resort to committing subsequent offenses, thereby impeding the likelihood of securing a judicial pardon again. The second hypothesis entails the offender refraining from re-engaging in criminal conduct subsequent to being pardoned, consequently creating the potential avenue for receiving a judicial pardon for any prospective transgressions. The latter hypothesis, however, is fraught with implausibility (Al-Yousef, 2003). This is due to the inherent contradiction that arises: if the offender indeed abstains from recommitting the crime, it logically follows that they would remain in compliance with the law, rendering the pursuit of a judicial pardon unnecessary.

Hence, the ramifications of a judicial pardon pertain exclusively to the penalty and do not impinge upon the inherent criminal nature of the deed. This distinction can be elucidated as follows:

Firstly, Firstly, it is important to acknowledge that a judicial pardon does not entail the eradication of the offense committed (Al-Suhaybani, 2012, pp. 204–205). The absence of any provision within Article 152 stipulating the annulment of the crime or the complete abrogation of trial proceedings underscores this aspect (Bouras & Ejali, 2013, pp. 499–500). This distinction stands in contrast to the phrasing within Section 87 of the UAE Law on Crimes and Penalties concerning the

suspension of the execution system. Notably, Article 87 states, "If the period specified in Article 86 of this law elapses without one of the reasons for canceling the suspension of execution, the judgment shall be considered null and void".

Article 87 pertaining to the suspension of execution distinctly mandates that when the designated suspension duration concludes without the revocation of the suspension order, the judgment is rendered void, consequently reverting the offender's status as if they had not been convicted or subjected to criminalization. Moreover, this entails the annulment of ancillary and auxiliary penalties. This formulation, however, is not replicated within the context of judicial pardon as delineated in Article 152. In the case of judicial pardon, while it results in the cessation of primary, collateral, and supplementary penalties, it does not culminate in the eradication of the sentence's existence as a precedent for recidivism (Al-Yousef, 2003). It is pivotal to note that the sequence of events differs, as the pardon precedes the conviction and is not subsequent to it.

Judicial pardon signifies an ultimate exemption from punishment, albeit without effacing the underlying criminal nature of the offender's action or negating the conviction. This is attributed to the fact that, fundamentally, no conviction is issued in instances where judicial pardon is granted (Abdul Jawad, 2006).

Evidently, the culmination of the judicial process in criminal cases results in one of two conceivable outcomes (Abu Amer, 2010, p. 1008): a verdict of innocence or a conviction. In light of this dichotomy, the question arises whether the judicial pardon represents a third alternative or an authentic judicial pronouncement. Indeed, the judicial pardon is unequivocally regarded as a legitimate judicial ruling, as underscored by the verbiage within Article 152. This section elucidates that the judge retains the prerogative to grant a pardon to the offender contingent upon the fulfillment of the legal prerequisites stipulated therein. This manifestation unequivocally renders the judicial pardon tantamount to a legal ruling within the ambit of criminal jurisdiction. Moreover, its efficacy hinges on its complete adherence to all the legal prerequisites mandated by the law for the issuance of judicial rulings.

Undeniably, the reach of the judicial pardon encompasses both the primary and ancillary penalties, effectively nullifying them. The judicial pardon stands as a departure from the conventional principle of penalty imposition, constituting an exemption of the offender from punitive measures. However, it should be emphasized that the scope of the pardon's effect does not encompass civil responsibilities or the erasure of the underlying criminal act. The criminal act itself remains registered in the offender's criminal record. The impact of the judicial pardon revolves around the annulment of the penalty from the very instant the pardon judgment is rendered. It is crucial to note that the judge is precluded from retroactively revoking their decision, even in cases where the offender reoffends subsequent to being granted a pardon.

In practical terms, it is discernible that the UAE legal framework does not compel the judge to grant a pardon to the offender and subsequently place them under judicial probation (Balal, 2001, p. 188). Importantly, the concept of judicial probation remains inapplicable to cases involving adults, both under the Federal Law on Crimes and Penalties and the Federal Code of Criminal Procedure (Ghannam, 2017, pp. 34-35). Consequently, the judicial pardon is construed as a mechanism lacking substantial and functional attributes in the domain of rehabilitation and reform, and it might even yield adverse repercussions in the realms of criminal justice and crime deterrence. Consequently, there is a need for the introduction of a judicial pardon system in tandem with a probationary component. The incorporation of this dual system entails significant implications:

Firstly, it necessitates that the court reevaluate the case subsequent to the conclusion of the probationary term, determining whether a final pardon should be granted or a penalty be imposed on the offender.

Secondly, it empowers the court to reassess the potential for granting a pardon once more based on the observations gleaned from the probationary period. In essence, this dual approach mandates two distinct stages: an initial phase and a subsequent final stage, the latter of which transpires immediately after the culmination of the probationary interval. The adoption of this dual system also

renders the judicial pardon susceptible to either revocation or implementation contingent upon the outcomes of the probationary period.

6.2 *Judicial pardon's impact on the judicial applicability framework*

The challenge facing the criminal judiciary in the UAE pertains to the inconsistency observed in the implementation of the judicial pardon system. This issue is rooted in the foundational concept of discretionary power vested within Article 152, which empowers judges to exercise their judgment in either endorsing or dismissing pardon requests. Furthermore, the inherent drawbacks of such discretionary authority, as previously discussed, contribute to its propensity to infringe upon the principle of equitable treatment among individuals with regard to punishment (Ali, 2013, p. 165).

An additional facet of this predicament manifests in the variable attitudes of judges, influenced by psychological and emotional considerations. Some judges may opt to embrace the judicial pardon system, while others harbor reservations, believing that its application could potentially deter the pursuit of justice in the realm of crime prevention and control.

The underlying causes of the predicament encountered by the judiciary in its engagement with the judicial pardon system trace back to its inherent nature as a mitigating circumstance. Consequently, the scope of its influence is restricted to primary penalties, excluding ancillary or supplementary penalties. Hence, the impact of the judicial pardon does not extend to penalties of a compensatory nature such as relative fines or restitution, nor does it encompass dismissals, as these penalties fall beyond the purview of considerations encapsulated in Article 152 of the UAE Law on Crimes and Penalties. This is particularly discernible in cases involving misdemeanors of a financial nature, as exemplified by instances of minor theft committed by individuals below the age of twenty-one. In this specific context, Article 822 of the same law stipulates that "in cases where the perpetrator is an employee, the sentence shall be imprisonment for a period ranging from one to three years, commencing from the date of sentence execution or forfeiture".

Judicial pardon operates within the confines of the judicial domain and functions as a discretionary act. Its execution is predicated upon the establishment of the offender's non-threatening disposition towards society. This action is imbued with an element of judicial leniency. Additionally, it embodies a form of judicial singularity, as the verdict of judicial pardon signifies the demonstration and validation of the offender's culpability (Al-Yousef, 2003). This persists even if the judge deems it unsuitable to levy any form of penalty or preventive measure, as determined by their own evaluative considerations. Consequently, an individual granted judicial pardon assumes the status of a culpable transgressor.

In practice, the implementation of judicial pardon does not preclude the possibility of the offender's criminal act being documented within their criminal record (Al-Kilani, 2011). Within the framework of the UAE legal system, the judicial pardon mechanism is best characterized as an accomplished rather than a conditional system. Under this system, courts make determinations even in cases where the accused's culpability has been established, leading to the permanent and unconditional release of the individual.

Regarding the boundaries of the courts' discretionary authority in pronouncing judicial pardon, the Emirati legal framework adheres to the principle of statutory-guided conviction (Al-Jawhouriya, 2019, pp. 24–25). This principle serves as a guiding principle for judges in gauging the degree of criminal risk posed by the offender, thereby facilitating the determination of an appropriate course of criminal action to mitigate this threat. It is evident that the discretion bestowed upon judges in rendering decisions on judicial pardon is circumscribed by legislative parameters, as delineated in Article 152. This regulatory framework serves not solely to impose constraints on the judicial pardon decision-making process but rather to offer support to judges in making informed judgments and selecting the most suitable punitive approach.

7. Conclusion

The dynamics of the judicial pardon system within the UAE's legal framework exhibit a nuanced application that pertains to individuals involved in misdemeanors while excluding those engaged in felonies. This selection underscores the legal system's commitment to upholding individuals' obligations to abide by legal norms. The exclusion of felonies from the ambit of Section 152 is pivotal in maintaining the equilibrium between individuals' compliance with legal rules and the deterrent function of punitive measures. The exclusion of felonies from the scope of judicial pardon aligns with the UAE's commitment to discouraging future criminal activities. Permitting pardons for felons could potentially undermine the retributive aspect of punishment, leading to an escalation in crime rates due to perceived leniency. Hence, the UAE's legal stance is oriented towards preventing potential crimes by maintaining the sanctity of retribution as a countermeasure.

The meticulous structuring of Emirati legislation is evident in the categorization of crimes eligible for judicial pardon. This categorization confines the application of the system to specific groups and certain misdemeanors. These misdemeanors, by their nature, encompass simpler offenses, carrying penalties ranging from one month to three years. Nonetheless, Section 152 endows the judge with considerable discretionary power, allowing them to accept or reject pardon requests. This wide discretion, while enabling individualized decisions, has the potential to undermine the principle of equitable punishment. The resulting uneven treatment could breed a sense of injustice among those who are denied pardon, thereby weakening the enforcement of justice.

Furthermore, the limitation of the age category for pardon beneficiaries from 18 to 21 years and the exclusion of individuals above 70 years of age highlight shortcomings in Section (152). While this age-specific focus aligns with the legislative intent, the exclusion of other age groups necessitates a critical examination. The discretion granted to trial judges, despite the exclusion of felony-level crimes, remains open to critique. To address this, aligning with jurisprudential opinion and confining the judge's authority to pardon within specific parameters for misdemeanors, particularly those punishable by imprisonment not exceeding two years, appears reasonable.

A proposed amendment to Section 152 suggests extending judicial pardon to all misdemeanors punishable by imprisonment, albeit without specifying the duration of imprisonment. This proposal, while comprehensive, intensifies the judge's discretionary authority, potentially leading to an overextension of the system's scope. To this end, a judicious revision could entail narrowing the application to only minor misdemeanors and excluding those punishable by over two years of imprisonment.

This proposal would be congruent with the goals of penalty suspension and aligned with UAE law. It also resonates with the judicial probation system, even if it is not explicitly incorporated into adult laws in the UAE. By instituting amendments that couple judicial pardon with judicial probation and specify the probationary period, the court gains flexibility in its decisions. This approach offers two outcomes: confirming exoneration if probationary terms are upheld or rescinding the pardon, and imposing the prescribed penalty for violations or subsequent offenses during the probation period. In conclusion, the intricate interplay between the scope of judicial pardon, the types of crimes covered, the judge's discretionary powers, and potential amendments is crucial in sustaining a delicate equilibrium between justice, deterrence, and individualized accountability within the UAE's legal framework.

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