

Judicial Pardon of Punishment: An Evaluative and Comparative Review

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Abstract: Unlike other laws, under the UAE Code of crimes and punishments No. (31) of 2021, the concept of judicial pardon of punishment refers to the legal authority vested in a judicial system to grant forgiveness or leniency to individuals who have been found guilty of a crime. Judicial pardon serves as a mechanism for eliminating the prescribed penalties for certain offenses. Comparative analysis reveals that the granting of a judicial pardon is typically based on a range of factors, such as the nature of the offense, the severity of the punishment, the individual's behavior, the presence of extenuating circumstances, and considerations of justice and fairness. It allows the judicial system to exercise discretion and flexibility in recognizing cases where the application of the prescribed punishment may be deemed unnecessary or where rehabilitation and reintegration into society have been successfully demonstrated. The decision to grant or deny a pardon rests within the discretion of the judiciary, considering the best interests of society, the rights of victims, and the individual's potential for reform. Thus, pardoning punishment can have significant implications for the convicted individual, as it offers the opportunity for a fresh start and a second chance at rebuilding their life. Yet, the analysis indicates that there is room for improving the legal structure of judicial pardon under the UAE Law and points out towards some possible deeper structure reforms.

Key Words: Judicial Pardon, Punishment, Criminal, UAE Law, Pardon Application, Offender rehabilitation.

1. INTRODUCTION

Punishment is no longer a tool of torture and revenge against the convict, but rather a means of reform and rehabilitation. Indeed, the concept of punishment has evolved over time, and many societies have recognized the importance of focusing on reform and rehabilitation rather than purely seeking retribution. This shift in perspective acknowledges that punishment should serve to address the underlying causes of criminal behavior, reintegrate individuals back into society, and reduce the likelihood of reoffending. Alternatives to incarceration, such as community service, restorative justice practices, judicial pardon, have gained prominence. These approaches seek to repair the harm caused by the crime, promote empathy and understanding, and foster a sense of responsibility and accountability in the convicted individual. By shifting the focus from punishment to one of reform and rehabilitation, societies can strive for a more just and effective criminal justice system. The aim is not only to punish individuals for their crimes but also to provide them with the necessary support and guidance to reintegrate into society successfully, reducing the likelihood of future offenses¹.

Thus, if it is possible to achieve the goals of reform and rehabilitation without pronouncing the punishment or carrying it out, then it becomes futile and even harmful to insist on doing so². Judicial pardon is considered one of the tools of the penal system, allowing the judge not to lay down the criminal penalty in certain cases, and it is defined as "the court's refusal to impose criminal punishment on the accused if it

¹ See further, Dhmarsh. A. Criminology and penology in accordance with the UAE Correctional Facilities Code, Dar Alfaq Publishers, UAE, 2022, PP171-200.

² Hamouda, A. Explanation of the General Rules of the Federal Penal Code, Part Two, General Theory of Criminal Sanctions (Punishment and Precautionary Measures), Dubai Police Academy, 2008, p. 342.

is believed that he will refrain from committing new crimes in the future³. Judicial pardon of punishment is a manifestation of the discretionary power of the judge in applying punishment, as the judge grants it to the offender by issuing a ruling to that effect instead of imposing a penalty on him for the crime for which he has been found guilty. Judicial pardon is a means of punitive individualization and is another form of clemency under the UAE code of crimes and punishments No.31 of 2021 in addition to the general and special forms of pardons. That is, while the general pardon falls under the authority of the legislative authority, the special pardon is issued by the head of state, judicial pardon falls under the authority of the competent criminal court⁴.

Judicial pardon allows the judge the right to exempt the accused from punishment despite the elements of the crime being present against him, because there is no longer any benefit to be gained from imposing it since the effects of the crime have been erased in another way⁵. Various situations exist under the UAE law and other legislations in which the judge is authorized to grant pardon to sentence. Some legislations, such as the French penal code, define the purpose and functions of punishment, which leads to arguing that if these functions have already been achieved before imposing the punishment, then the imposition of such punishment becomes unnecessary. In other words, when penalty becomes unnecessary, as its purposes have been fulfilled before its imposition, then judicial pardon gains legitimacy. The principle of the necessity of punishment means that the law should only provide for punishments that are clearly and precisely necessary, as stated in Article (8) of the Declaration of the Rights of Man and Citizen 1789. Since the mid-twentieth century, the social defense movement has prevailed, promoting a spirit of modernization in criminal law, and directing punishment towards achieving social peace and reintegrating criminals⁶. The principle of necessity extends to the stage of implementing the punishment, where the judge refrains from applying the sentence when it is confirmed that its application is not necessary, as evident in the system of judicial pardon. As Montesquieu suggests, any punishment that does not arise from an absolute necessity is considered unjust⁷.

In this study, we seek to comparatively explore and analyze the legal requirements of judicial pardon of punishment, its subjective and objective scope, limitations, and its effects. This involves analyzing, and comparatively evaluating this area of criminal law to highlight any shortcomings or defects in the rules that govern this issue particularly pursuant to the UAE Code of crimes and punishments. Central to this purpose is to provide some recommendations that could contribute towards remedying any potential flaws in the law on this contentious issue. To achieve this aim, this paper is divided into three main sections. The first addresses the nature of judicial pardon of punishment. The second explores and critically compares the various cases where judges can grant pardon, through highlighting the specific legal requirements for each case. In the third section, the Effects of the application of judicial pardon are addressed.

2. THE NATURE OF JUDICIAL PARDON OF PUNISHMENT

Before delving into analyzing the requirements of judicial pardon in UAE law, it would be useful to clarify its nature through distinguishing it from any similar legal concepts or rules, and then highlights its justifications.

³ Sorour, A, *The Judicial Test, Comparative Study*, Cairo, 1963, p. 89. Youssef Jawadi, *The Limits of the Criminal Judge's Authority in Sentencing*, Dar Al-Jami'a Al-Jadida, Egypt, 2011, p. 119.

⁴ Abdel-Moneim, M, *Alternatives to Deprivation of Liberty in Modern Criminal Legislation*, p. 148.

⁵ Bilal, A. *The General Theory of Criminal Sanctions*, p. 493.

⁶ Pauline Le Monnier de Gouville, *LE PRINCIPE DE NÉCESSITÉ EN DROIT PÉNAL*, Dalloz | « Les Cahiers de la Justice », 2014/3 N° 3 p. 495.

⁷ Florent Kirmann , *Le principe de nécessité en droit pénal des affaires*, thèse, Université de Lorraine, 2018, P. 25.

2.1. The Concept of Judicial Pardon and its Distinction from Other Similar Legal Concepts and Rules

Judicial pardon is defined as "the court's decision to refrain from imposing a criminal penalty on the defendant if it believes that the defendant will refrain from committing new crimes in the future"⁸. The purpose of this judicial pardon is to give the judge the right to exempt the convict from punishment even if the elements of the crime are present because there is no longer any benefit to be gained from imposing the punishment since the effects of the crime have already been erased in some other way⁹. In this sense, judicial pardon is distinguishable from causes of non-responsibility, causes of justifications, mitigating legal excuses, and mitigating judicial circumstances.

Under the UAE law causes of non-responsibility relate to the personal aspect of the offender affecting either his or her consciousness or freedom of choice or both. Therefore, if a cause exists, then criminal responsibility is waived due to the lack of criminal capacity. Examples of such causes in UAE law include minority, insanity, voluntary intoxication, necessity, and coercion. Whereas, in the case of judicial pardon of punishment, the offender is mentally competent and not subject to any form of duress or coercion, or any other causes which might impair his or her criminal liability.

Furthermore, causes of non-responsibility are mandatory conditions that serve to exempt offenders entirely from criminal liability as per law, and the judge does not have discretionary authority in their application. In contrast, judicial pardon of punishment is a discretionary decision made by the judge based on the specific circumstances as stated by the law. In other words, if a cause of non-responsibility is established, then the offender must be exempted from criminal liability. Whereas, in situations involving judicial pardon, it is up to the competent court to grant the pardon instead of imposing the sentence. The outcome of applying both rules is the same, that is, exempting the offender from criminal punishment. Yet, the difference between them lies in the fact that whether the exemption of criminal sentence is mandatory or subject to the judge discretionary power as evident in cases involving judicial pardon.

Judicial pardon is also distinguishable from causes of justification such as self-defense. That is, while the former leads to the negation of the criminal characteristic of the offender's conduct¹⁰, the second does not have such effect as the conduct still retains its criminal nature. Based on that, establishing a cause of justification leads, as per law to the absence of both criminal and civil liability, whereas judicial pardon only affects the imposition of criminal punishment, while civil liability and civil penalties remain unaffected. Moreover, the effects of the cause of justification extend to include the accomplices and accessories to the principal offender offence, whereas the effect of judicial pardon is personal, and limited to the offender whom the judge decides to grant. Judicial pardon of punishment is also distinct from mitigating legal excuses¹¹, mitigating judicial circumstances¹² and exempting excuses¹³. The difference between judicial pardon and these mitigating factors lies in the fact that judicial pardon falls with the discretionary power of

⁸ Sorour, A. *The Judicial Test, Comparative Study*, Cairo, 1963, p. 89.

⁹ Bilal, A. *General Theory of Criminal Sanctions*, p. 493.

¹⁰ Abedalftah, M. *Explanation of the UAE Code of Crimes and Punishments: The General Part*, Dar Alafaq Publishers, UAE, 2022, P189.

¹¹ Mitigating legal excuses refer to factors that can be presented in a legal context to reduce or lessen the severity of a person's penalty or liability for a particular action or offense. Sentence reduction is mandatory according to these excuses Articles (97, 98, 100) of the UAE code of crimes and punishments 2021.

¹² Mitigating judicial excuses refer to reasons provided by a court or judge to mitigate an individual's penalty or culpability for a particular action or offense. Pursuant to these factors, reduction of the penalty is not mandatory but discretionary (Articles 99, 101) of the UAE code of crimes and punishments.

¹³ Exempting excuses are circumstances or reasons that can absolve an individual completely from penalty or exempt them from punishment for a particular action or offense (Article 96) of the Mentioned Code.

the judge, which he exercises within a certain legislative framework. But the mitigating factors of penalty can be either obligatory or discretionary based on the relevant criminal provision or Article. Contrary to the mitigating excuses or circumstances, exempting excuses operate to fully absolve the offender from criminal punishment in certain cases. Its effect can also extend to a stage prior to the issuance of the criminal judgment and lay down of the criminal sentence. This possible under the UAE law as the public prosecution has the authority to issue an order not prosecute the accused if an exempting excuse is available, pursuant to Article 118 of the UAE Criminal Procedure Law 2022, which states that: "the public prosecution, after conducting its investigation, may issue an order not to file a lawsuit and order the release of the accused, unless he or she is detained for another reason." The scope of judicial pardon does not, however, extend to allow the public prosecution such authority.

Furthermore, under both the UAE and comparative criminal laws the justifying reasons that underpin the enactment of the exempting excuses are stemming from the law inclusion to induce offenders to come forwards reporting crimes before they are discovered¹⁴, to encourage them to relinquish the criminal venture. Exempting excuses are, usually, granted based on family relationships or ties preservation, such as the excuse that exempts from punishment in case of not reporting a crime committed by one's spouses or their direct relatives¹⁵, or in case of refusing to testify against one's relatives. Therefore, unlike judicial pardon, mitigating and exempting factors of punishment have a utilitarian function and is not related to the individualization of punishment¹⁶.

2.2. The Rationale for Judicial Pardon of Punishment

Critics have raised concerns about the system of judicial pardon, arguing that it violates the principle of punishment's legality and erodes the certainty of punishment by offering the chance to evade it¹⁷. Nevertheless, these criticisms have been insufficient to counter the multitude of justifications in its favor.

It has been argued that the justifications behind allowing judges the authority to grant pardon in specific situations lie in the objective of maintaining a balance between the power of the three state's authorities in pardoning offenders. That is, while the legislative authority holds jurisdiction over the granting of general pardon, which can only be done through legislation, the executive authority has jurisdiction over special pardon issued by the head of state. Judicial pardon, on the other hand, falls under the power of the judicial authority¹⁸ and represents the final form in tailoring punishment, as it allows for a complete exemption from its imposition¹⁹.

¹⁴ Article 228 of the UAE Code of crimes and punishments states that: "as an exception to Article 225 of this law, the court, upon the request of the public prosecutor or on its own initiative, may decide to mitigate the punishment or replace it with a fine not less than 100,000 dirhams and not exceeding 10,000,000 ten million dirhams, or grant exemption from punishment to individuals who provide information to the judicial or administrative authorities regarding any grave crime related to external or internal state security or crimes considered grave in other penal laws pertaining to state security, provided that such information leads to their disclosure, the identification of the perpetrators, the substantiation of evidence against them, or the arrest of any of them."

¹⁵ Article 323 stipulates that "individuals who possess knowledge of a crime and intentionally refrain from reporting it to the appropriate authorities can be subject to a maximum prison sentence of one year or a fine. However, this penalty may be waived if the person who failed to report the crime is the spouse of the perpetrator, a one of his ancestors or descendants, or brothers or sisters, or someone in a comparable familial relationship as defined by affinity".

¹⁶ Sorour, A. Penal Law: The General Part, Dar Al-Nahda Al-Arabiya, 2015, p. 1031.

¹⁷ Hassani, M. "Explanation of Penal Law: The General Part, 8th edition, Judges' Club, 2019, p. 1107.

¹⁸ Abdel-Moneim, M. "Alternatives to Deprivation of Liberty in Modern Criminal Legislation", p. 148.

¹⁹ CARON D., Dispense de peine et ajournement, J-cl. Pénal, art. 132-58 à 132-70-3, fasc.20, 2015, no. 2.

Judicial pardon also reflects the discretionary power of the judge in applying punishment, enabling him or her to apply the principle of individualization of criminal sentence²⁰, and the principle of necessity of punishment, which are included in some constitutions and comparative legislations such as French law. To this effect, Article 131 of the French Penal Code states that "in order to protect society, prevent the commission of new crimes, restore social balance, and protect the interests of the victims, punishment is set to achieve the following functions: punishing the offender, promoting rehabilitation, integration, or reintegration of the offender." Article (132-1) of the French Penal Code also states that "any punishment pronounced by the judiciary must be individualized within the limits specified by law. The judiciary determines the nature, extent, and system of the punishments according to the circumstances of the crime, the personality of the offender, as well as their financial, family, and social status, in accordance with the purposes and functions of punishment specified in Article 130-1 of the Penal Code."

When exercising their discretion in determining punishment, criminal court focuses on ensuring that the imposed penalty is commensurate with the personality of the offender because it is trying him for the crime and not the crime itself²¹. The Supreme Constitutional Court in Egypt asserted that individualization of penalty applied by the judge is not separate from the contemporary concepts of criminal policy but is related to its direct application. Applying it directly to the criminal incident without consideration of the offender's personality and the circumstances in which the crime has been committed would not accomplish the objectives that meant to be achieved through the application of sentence. From a constitutional perspective, the legitimacy of punishment lies in its application in a manner appropriately reflective of the gravity of the offence committed and the personality of the offender. Only through such considerations we can ensure its rationality, humanity, fairness, and appropriateness in compensating the damages that has been caused by the crime²².

Furthermore, it has been argued that if judges have the power to suspend the execution of criminal punishment, then it is entirely feasible to allow them the authority to abstain from rendering a judgment involving such punishment, thereby bestowing judicial clemency. Judicial pardon also prevents the convicted person from being subjected to imprisonment, thus avoiding the negative consequences of custodial sentences that could affect both himself as well as their families, especially in situations involving short-term sentences²³. Moreover, judges can grant pardon if they believe that it would be more conducive to the reform and rehabilitation of the accused. Clemency also significantly contributes to the realization of the interests of the victims and enhances their participation in criminal proceedings.

3. THE SCOPE OF JUDICIAL PARDON OF PUNISHMENT

Article (152) of the UAE Code of crimes and punishments states that "in addition to what might be specified in a special provision, the judge may exempt the offender from punishments when the crime committed is a misdemeanor in any of the following cases: a) If the offender has not reached the age of 21 at the time of committing the crime and has not been previously convicted of another crime. b) If the misdemeanor is related to insult or assault and the wrongdoing is mutual, or if it is of minor nature and the victim waives their personal rights. In the case of exemption, the judge must provide the offender with appropriate advice and guidance and warn them that they will not be eligible for future exemptions".

²⁰ Manon Leblond, *Le principe d'individualisation de la peine en droit pénal français*, thèse, Université de Montpellier, 2020, P. 18.

²¹ Sorour, A. *Penal Law: The General Part*, Dar Al-Nahda Al-Arabiya, 2015, p. 1015.

²² The Supreme Constitutional Court in Egypt, December 3, 2016. See also, its ruling on November 3, 2014.

²³ Rizk, s. "The Constitutional Principles of Criminal and Disciplinary Penalties", *Dar Al-Fikr wa Al-Qanoon*, 2012, p. 477.

Article (152) specifies three distinct situations in which judicial pardon can be granted, with an additional two cases outlined in Articles (61) and (102) of the UAE Code. In the following discussion, each of these cases is analyzed in comparison with their corresponding situations in other jurisdictions.

3.1. Committing a Misdemeanor by a Person Under the Age of 21 years if they have not been Previously Convicted of Another Crime.

As specified in Article 152, the first situation for judicial pardon pertains to a misdemeanor committed by an individual who is under the age of 21 and has not previously been convicted of any other crimes. Thus, three conditions need to be satisfied for the judicial pardon to be granted in this case, as further discussed below.

3.1.1. The Crime Committed Must be a Misdemeanor.

In accordance with the UAE code of crimes and punishments, the severity of the crime has been taken into careful consideration in granting judges the authority of judicial pardon. This legal framework distinguishes between misdemeanors²⁴, felonies²⁵, and violations²⁶, recognizing that misdemeanors are less serious offenses compared to felonies but more significant than violations. Given the gravity of felonies, it is reasonable for the legislator to exclude them from the scope of judicial pardon. This exclusion acknowledges the seriousness of such offenses and emphasizes the need for appropriate and proportionate responses for those convicted of felonies. By reserving the authority of judicial pardon for less severe offenses, the legal system aims to maintain a balance between justice, accountability, and the preservation of public safety.

However, the law recognizes that there are instances where the penalty for an offender charged with a crime can be mitigated. This can occur if there are mitigating legal excuses or felony mitigating judicial circumstances applicable to the case. In such situations, the penalty imposed on the offender may be reduced, mitigated, or replaced with an alternative form of punishment as prescribed by law. This recognition of mitigating factors reflects a nuanced approach to justice that considers the unique aspects of each situation and strives to promote fairness in the administration of penalties for felony offenses. In cases where the penalty for a felony is reduced to a level where it does not exceed one year of imprisonment, the judge also has the authority to suspend the execution of the penalty if deemed appropriate.

The exclusion of violations, on the other hand, from the scope of judicial pardon pursuant to Article (152) raises a valid question, given that they are less serious offenses compared to misdemeanors, and should be eligible for judicial pardon. While we cannot provide specific insights into the intentions of the UAE legislator, there might be several reasons behind this decision. One rationale is that violations are often viewed as minor infractions, and the existing penalties may already be considered proportionate and appropriate for such offenses. Consequently, the legislator might have deemed it unnecessary to include violations in the scope of judicial pardon, as the existing penalties adequately address these offenses.

²⁴ A misdemeanor can result in one or more of the following penalties: imprisonment for a duration of one month to three years, a fine from 10,000- 5000000 dirhams, or Aldyah amounting to 200,000 dirhams (Articles 30, 70, 72) of the UAE Code of Crimes and punishments.

²⁵ A felony is a crime punishable by any of the following penalties: Death penalty, life imprisonment, temporal imprisonment from 3 years to 15 years (Articles 29, 69,) of the same code.

²⁶ A violation is a crime punishable by custody for a period not less than twenty-four hours and not exceeding ten days or a fine from 1000- 10000 dirhams (Articles 31, 72) of the same code,

violations are also excluded from the scope of mitigating legal excuses and judicial circumstances, and they are deemed to have non-serious penalties, thus not deserving of a reduction in punishment.

However, and contrary to this view, it can be argued that this matter requires further and deeper considerations. That is, in the UAE, unlike in other jurisdictions, offenders charged with committing a violation may face a penalty that includes both a fine, which can reach up to 10,000 AED, and a period of incarceration that typically lasts for 10 days. This period of incarceration is considered a penalty like imprisonment, although it differs in terms of duration from traditional prison sentences associated with more serious offenses.

Another valid question arises regarding the extension of the scope of judicial pardon to all types of misdemeanors, regardless of their degree of seriousness or not. Or whether it would have been more appropriate for the legislator to establish a criterion based on the severity or limit of the prescribed penalty for an offense, to determine whether it should fall within the scope of judicial pardon or not?

We think there are different approaches that legislators may consider when determining the eligibility of this type of offence for judicial pardon. One approach could be to include all misdemeanors within the scope of judicial pardon, regardless of their degree of seriousness. This approach would prioritize the potential for rehabilitation and reform, recognizing that individuals convicted of more serious misdemeanors may still benefit from the opportunity for pardon and reintegrating into society. Another approach could involve establishing a criterion based on the severity or limit of the penalty prescribed for a misdemeanor. This criterion would determine whether the offense should be eligible for judicial pardon based on the limit of its associated penalties.

As between these two approaches, it seems that pursuant to Article 152 (1) the first approach is adopted by the UAE Code of crimes and punishments. Clearly the is not required that the sentence of the misdemeanor should not exceed one year imprisonment to be eligible for judicial pardon, which indicates that all types of misdemeanors regardless of their seriousness fall within its scope. This is the case according to Article 152 (1) only if the offender is under the age of 21 years old and has not been convicted previously of another crime as will be discussed below. Comparatively, under French law, the scope of judicial pardon extends to cover all types of misdemeanors and violations, including penalties imposed by military courts. However, it excludes felonies, tax crimes, police and security measures related to violations, as well as the exceptions mentioned in Articles (63-132)of the Penal Code that address deferred punishment with probation.

It is worth noting that judicial pardon under the UAE code, as well as the French law, falls under the discretionary power of the competent court, and it is not mandatory²⁷. Thus, the judge can still refrain from granting the offender the pardon in cases involving the commission of a serious misdemeanor, as he can still do the same even if the misdemeanor is less serious. In our view, it would have been better for the law to distinguish between serious and less serious misdemeanors based on the severity of their prescribed penalty, restricting the scope of judicial pardon to the less serious ones. It is also recommended Article (152)should be amended to include violations within the scope of judicial pardon.

Under UAE law, however, judicial pardon cannot be granted despite the fulfillment of its conditions in some specific cases. For example, Article 36 (1) of the UAE Immigration Law No. (6) of 1973 excludes crimes stipulated in Articles (31) and 35 (1) of this law from the scope of judicial clemency, the replacement of the penalty, and the suspension of the sentence. To this effect, The Abu Dhabi Cassation Court ruled on February 25, 2015, as it appears from the judgment appealed that the judge imposed the penalty of

²⁷ Cass. Crim., 28 fevrier 2018 no 17-81. 962.

deportation instead of imprisonment contrary to the forementioned Article 36/1, then the judge has made a mistake in applying the law, which requires the annulment of the appealed judgment. And since applying the appropriate original penalty falls within the jurisdiction of the court of first instance, the annulment must be accompanied by a referral to that court²⁸.

3.1.2. The Offender Must Not Have Reached 21 Years of Age.

Pursuant to Article 152 (1), judicial pardon can only be granted if the offender is under the age of 21 years old at the time of committing the misdemeanor. Comparatively, under French law, Judicial amnesty applies to all natural persons, including minors from 13 to 18 years old²⁹, as well as legal entities (non-natural legal persons)³⁰. Certainly, this age represents a formative period in one's life characterized by limited life experience, a diminished capacity to evaluate situations effectively, make sound choices, and susceptibility to external influences, all of which could contribute to their engagement in criminal behavior. Under UAE law, the age of the offender at the time of committing the crime has always been considered when determining his or her criminal liability. That is, pursuant to the UAE Juveniles Code No. (6) of 2022, the individual is not criminal liable if he or she is under the age of 12 (Article 5). Whereas, diminished criminal liability is attributed to offenders exceeding the age of 12 but has not completed the age of 18 (Articles 6, 7, 8)³¹.

Furthermore, in accordance with Article (97) of UAE Code of crimes and punishments, the age of youthfulness being defined as below the age of 21, serves as a mitigating legal excuse to offender's penalty³². This interpretation has been consistently upheld by both Dubai Court of Cassation³³ and the Federal Supreme Court in their respective rulings³⁴. Hence, the courts consider the offender's young age as a valid justification for reducing the severity of his or her punishment.

3.1.3. Absence of Any Prior Conviction for the Offender Accused of Committing a Misdemeanor.

This condition is significantly important for judicial pardon in this case, as it signifies the lack of criminal propensity on the part of the offender. While this criterion, as set in Article (152), is not the sole determinant

²⁸ The Court of Cassation in Abu Dhabi, Criminal, Case No. 34 of 2015, held on February 25, 2015.

²⁹ Article 24-5 de l'ordonnance n0. 45-174 du 2 février 1945 relative à l'enfance délinquant et art. L 121-2 et L 121-3 du code de la Justice penal des mineurs.

³⁰ Article 132-60 et suivants du code penal.

³¹ Article 6 of Federal Law No. 6 of 2022 on Juveniles and Delinquents states that: "If a juvenile who has completed twelve years of age but has not reached sixteen years commits a crime punishable under the Penal Code or any other law, the court shall impose one of the judicial measures provided for in this law". Article 7 states that: "If a juvenile who has reached sixteen years of age commits a crime punishable under the Penal Code or any other law, the judge may impose any of the judicial measures provided for in this law instead of the prescribed penalties". Article 8 stipulates that: "In cases where criminal penalties are applicable to the juveniles:

1. nor death penalty or life of temporal imprisonment can be imposed on them.
2. Death penalty, life of temporal imprisonment, as prescribed for the committed crime, shall be replaced with a maximum period of ten years of imprisonment.
3. The term of imprisonment imposed on the delinquent shall not exceed half of the maximum penalty provided for in the original offense".

³² Article (97) of the UAE code of crimes and punishments states that: "mitigating excuses include the offender's young age, committing the crime with non-evil motives, or as a response to serious and unjustified provocation from the victim".

³³ Dubai Court of Cassation, Appeal No. 1 of 1999, Session held on February 27, 1999, Technical Office 10, Page 1163.

³⁴ See Dubai Court of Cassation, Appeal No. 123 year 1996, session held on 22-2-1997; Dubai Court of Cassation, Appeal No. 24 year 2004, session held on 29-5-2004; Dubai Court of Cassation, Appeal No. 109 year 2001, session held on 30-6-2001.

of the absence of criminal risk. The legislator has combined the offender's age with this condition to provide them with an opportunity to avoid imprisonment during their youthful years. Similarly, under French law, various conditions need to be satisfied for an offender to be eligible for judicial pardon³⁵. These include the rehabilitation and integration of the offender into society, compensating victims, and resolving the disruption caused by the crime.

It should be noted that judicial pardon, as mentioned earlier, is subject to the discretionary power of the judge³⁶, and if the offender's actions exhibit a certain level or degree of dangerousness, or if the required conditions of judicial pardon are not fulfilled, the offender may not be eligible for pardon. Yet, under French law, sentence deferral is permissible in cases where the essential requirements for a judicial pardon have not been satisfied and are still undergoing verification. This allows the judge to pronounce the perpetrator as guilty, while simultaneously opting to postpone the sentencing if it is determined that the rehabilitation and reintegration of the guilty party are still being assessed and that the harm caused by the crime will eventually come to an end³⁷. Typically, within a timeframe of one year or less³⁸, the judge will render their decision on the deferred sentence, having three available options. The first is to grant a judicial pardon if the necessary conditions have been fulfilled. The second is to impose the penalty if the conditions have not been met. Additionally, the judge has the discretion to further defer the sentence if deemed appropriate³⁹.

3.2. Mutual Insult and Assault.

This is the second case of judicial pardon pursuant to Article 152 (2) of the UAE code of crimes and punishments. In this case, judicial pardon requires only that the committed misdemeanor is either mutual insult or mutual assault, with no further requirements need to be established. The legislator has based the justification for amnesty in this case on the seriousness of the crime, as insult and assault crimes are deemed to be non-serious crimes in the eyes of law. However, regarding assault, it should be limited only to minor assault crimes and not to grievous bodily harm or aggravated assault that leads to permanent disability. That is, under the UAE code, various forms of criminal assaults exist, and we contend that, in this case, judicial pardon should be confined only to the minor cases of criminal assault.

In addition to the specific type of offense, it is required that the committed crime, whether it be insult or assault, must be mutual. Although the law does not explicitly define the term "mutual assault" or "mutual insult," its interpretation can be inferred. Mutual insult can be understood as a situation where two or more individuals exchange offensive or disrespectful remarks towards each other. On the other hand, mutual assault, within the context of criminal law, refers to a scenario where two or more individuals simultaneously engage in physical aggression or violence against each other. This indicates that both parties actively participate in the altercation, mutually committing acts of assault or causing physical harm to one another. Such acts typically involve striking, hitting, or physically attacking with the intention of causing injury. According to this interpretation, the concept of mutual assault or insult as a basis for judicial pardon differs from situations where a person is being attacked and responds in self-defence. In the latter case, the defender may have a legal justification for their actions, eliminating the need to address the question of judicial pardon. While in some legal systems, subsequent insult may not be punishable, the UAE legislator

³⁵ Manon Leblond, *Le principe d'individualisation de la peine en droit pénal français*, thèse, précité, P. 397. Cyril Aufrechter, *L'affaire Christine Lagarde, la négligence et la dispense de peine*, 2017, *Le petit jurist. Cass. Crim.*, 11 octobre 2020, pourvoi no. 20-81.493. Fanny Vansillette, *Christine Lagarde déclarée coupable mais sans condamnation à une peine : la dispense de peine existe-t-elle en droit belge ?*, *Justice – en – ligne*.

³⁶ *Cass. Crim.*, 28 sept. 2011, n0. 11-8-496; *Cass. Crim.*, 17 Juin 2014, n0. 13-85.685.

³⁷ Article 132-60 du code penal.

³⁸ Article 132-62.

³⁹ Article 132-61.

has specifically referred to the concept of mutual insult in this context, which does not necessitate determining who initiated the insult first.

In line with this, the Misdemeanor Court's conviction of the first accused for insulting the honor and dignity of the second accused by sending a message to their phone has been overturned by the Appeal Court of Misdemeanors in Ras Al Khaimah. This decision was made because the second accused retaliated by sending insulting messages to the first accused via their own phone. Following the reversal of the Misdemeanor Court's verdict, the Court of Appealed Misdemeanors granted judicial pardon to both offenders, considering the presence of the condition of mutual insult, which permits the court to grant such a pardon⁴⁰.

3.3. Cases of Insult or Assault Where the Victim Waives their Personal Right.

According to Article 152 (2) of the UAE Code of Crimes and Punishments, it is evident that two requirements must be fulfilled for the offender to be eligible for a judicial pardon in this case. First, the assault must be of a minor nature, and second, the victim must willingly waive their personal rights. It is important, however, to mention that several legislations consider the victim's voluntary conciliation with the offender as a ground for the termination of criminal suit concerning a wide range of criminal offenses, including insults and assault crimes.

To this effect, Articles (348, 349) of the UAE Code of Criminal Procedures No. (38) of 2022, state that a reconciliation between the victim and the offender results in the dismissal of criminal cases, including those involving insult and assault crimes. Some may argue that if these Articles are applied and result in the termination of the criminal suits, there would be no need to apply the rules of judicial pardon. Consequently, Article (152) should be amended to remove the requirement of waiving personal rights as a prerequisite for applying judicial pardon. However, we firmly maintain that a reconciliation between the victim and the offender necessitates an agreement between both parties, which, upon approval by the competent court, concludes the criminal proceedings for insult and assault crimes. Conversely, the voluntary waiver of the victim's personal rights does not necessarily mandate reaching an agreement with the offender. It can be done independently, leading to the application of the rule concerning judicial pardon, as specified in Article (152).

In the context of judicial pardon, Article 152 (2) explicitly states that the assault must be of a minor nature. This requirement ensures that severe or aggravated assault cases are excluded from the scope of judicial pardon. As a result, the implementation of this provision should not present challenges to the judiciary, as the law already defines the criteria for determining severe assault based on corresponding penalties. Similarly, regarding the offense of insult, the law indeed differentiates between simple and aggravated insults, imposing distinct penalties for each. Consequently, in cases where the victim's waiver is obtained, an offender charged with a simple insult offense may be eligible for judicial pardon.

3.4. Exceeding the Limits of Justifications in Good Faith

Under UAE Code of Crimes and Punishments, causes of justification encompass the exercise of rights, self-defense, the fulfillment of legal duties and superior orders, as well as aiding others (Articles 54-61). It is noteworthy that, in line with other laws, the UAE legislature considers the exceeding of the prescribed limits of these justifications in good faith as a mitigating legal excuse for punishment⁴¹. However, and unlike other laws, under the UAE law when such a circumstance is substantiated, the judiciary is also empowered

⁴⁰ Court of Cassation in Ras Al Khaimah, Session 18/10/2009, Criminal Case, Appeal No. 23 Year 4 Judicial.

⁴¹ Abedalftah, M. Explanation of the UAE Code of Crimes and Punishments: The General Part, Dar Alafaq Publishers, UAE, 2022, p 220.

to grant the offender a pardon of punishment. The scope of pardon in this case extends to include both misdemeanors and felonies as opposed to the cases as established in Article (152) mentioned above.

Unlike French law, the legal system in the United Arab Emirates (UAE) acknowledges the concept of rights as a valid justification for certain actions. However, Article (54) of the UAE Code of Crimes and Punishments highlights that if someone exceeds the permissible boundaries while exercising their rights, it must be demonstrated that the individual's right is recognized under the law or the principles of Islamic Shar'ah for the case to be established. This means that merely claiming a right is not sufficient; it must align with legal provisions or Islamic principles as specified in UAE law. In accordance with Shar'ah principles, for example, the judge retains the discretion to grant a judicial pardon to a parent or spouse, rather than merely mitigating their sentence, if they exceed the limits, in good faith, while disciplining their child or spouse. However, an important query arises: Does the scope of this pardon encompass all types of offenses, including assault resulting in permanent disability or death? Or only limited to minor assault?

According to Article (61) of the UAE Code of Crimes and Punishment Law, the power of judicial pardon extends to both misdemeanors and felonies. As previously mentioned, in cases involving the exceeding of justification limits, the judge has the discretion to either reduce the offender's sentence or grant a pardon, if deemed appropriate. However, this extension of the pardon's scope has sparked criticism, particularly in cases where a parent's disciplinary actions lead to death or permanent disability. Nevertheless, it is important to highlight that the law stipulates that the father's actions must be carried out in good faith, meaning there was no intention to cause permanent disability or death. Under this interpretation, the father's offense may be classified as a misdemeanor rather than a felony, making it eligible for a potential pardon. However, if the action was not performed in good faith, Article (61) does not apply.

It is important to clarify that Article (61) of the UAE Code applies to all causes of justification and is not limited to cases of exceeding disciplinary power. Its primary focus is on situations where the limits of self-defence are exceeded in good faith⁴². This distinguishes UAE law from other laws, such as Belgium law, where exceeding the limits of self-defence in good faith may be considered a mitigating factor. In contrast, UAE law allows for greater leniency by granting judges the discretionary authority to issue a full pardon of punishment. Similarly, according to Article 60 (3) of the Jordanian Penal Code No. (16) of 1960, if a defender exceeds the reasonable limits of force in self-defence but does so in good faith without intending to cause excessive harm, the judge has the discretion to either grant the defender exemption from punishment or reduce it following the guidelines specified in Article (98) of the same law. Yet, the question arises concerning the criteria for establishing good faith and determining when a case of exceeding the limits in self-defence can be substantiated. Typically, matters of this nature are within the purview of the judge, who determines the outcome based on the specific circumstances of each individual case.

It is worth noting that Article (251) of the Egyptian Penal Code explicitly states that individuals who exceed the limits of self-defence in good faith, without intending to cause excessive harm, are not completely exempt from punishment. However, when such acts are classified as felonies, the judge has the authority to impose imprisonment instead of the prescribed punishment for that specific felony. Unlike UAE law, the Egyptian law does not incorporate judicial pardon for cases of exceeding the limits of self-defence.

⁴² Under the UAE Law, the scope of self-defence extends to include situations where the individual attempts to ward off an attack against the self, protect his or her property, or to ward off an attack against another person or that person's property (Articles 58-60). Exceeding the limits of self-defence refers to a situation where a person uses more force than is reasonably necessary to protect themselves from harm. This could involve using excessive force, causing unnecessary harm, or continuing to attack an aggressor after the threat has been neutralized. In such cases, the person may be held legally accountable for their actions, but under the UAE law judicial pardon may be granted if the offender's excessive action was done in good faith (Article 61).

Instead, it considers it as a mitigating factor applicable solely to felonies, resulting in the substitution of the prescribed felony punishment with a prison sentence.

Similarly, under some other legislations, exceeding the limits of self-defence is considered only as a mitigating factor for punishment, not allowing the judge to grant full pardon of punishment. Article (73) of the Romanian Penal Code 1968 considers exceeding the limits of self-defence as a mitigating factor for punishment, as does Article (26) of the Guatemalan Penal Code. Article (33) of the Czechoslovakian Penal Code 1961 indicates that when assessing the punishment, the fact that the offender committed the crime to prevent an attack or danger without meeting all the conditions of self-defence is taken into special consideration as a mitigating factor. Article (46), paragraph 1 of the Uruguayan Penal Code states that incomplete self-defence is considered as a factor for mitigating punishment.

In Ireland, using excessive force to protect oneself from an unlawful attack is considered unlawful. However, if the use of force exceeds what is necessary for self-defence but is done to protect one's life, it will be classified as non-intentional manslaughter. In England, the Criminal Justice Act of 2008 specifies that the mitigating circumstances related to legitimate defence do not apply in cases of exceeding the limits of self-defence. Nonetheless, under the 2009 law, if a person causes the death of another while defending their own life and can demonstrate a loss of control due to fear of serious violence, they may be convicted of non-intentional killing instead of intentional killing.

3.5. Combined Mitigating Legal Excuse and Mitigating Judicial Circumstance in Misdemeanors.

In UAE law, both mitigating legal excuses and mitigating judicial circumstances are recognized⁴³. While a reduction in sentence is obligatory in cases involving legal excuses, it is not mandatory when mitigating circumstances are involved pursuant to Articles (95-101). In the latter case, the decision to grant such a reduction or not rests with the judge, who considers factors such as the nature of the offense and the personal conditions of the offender⁴⁴. However, if both mitigating factors are present in a misdemeanor, the judge has the authority to forgo imposing a penalty on the offender and instead grant them a pardon, as stated in Article (102). For an offender to be eligible for judicial pardon, it is essential that both an extenuating legal excuse and a mitigating circumstance coexist. The presence of only one of these factors is insufficient to qualify for judicial pardon⁴⁵.

As has been seen judicial pardon is limited to cases involving misdemeanors and does not extend to felonies pursuant to Article (152) of the UAE Code. This distinction recognizes that exempting offenders of serious crimes from punishment could potentially lead to victims or their families seeking revenge independently, outside the legal framework. Therefore, the decision to exclude felonies from the possibility of judicial pardon serves to maintain a balance between justice and preventing potential acts of retribution.

To understand the legislative intention behind granting judges the authority of judicial pardon in such cases, it is essential to shed light on the impact of mitigating excuses and circumstances, particularly in misdemeanors. It is crucial to understand that both mitigating excuses and circumstances have the same effect, resulting in the reduction of punishment to the same extent for misdemeanors. Mitigating legal excuses, under the UAE Code, include the youth of the offender, honorable motives, and provocation

⁴³ Alqudah, M. Explanation of The UAE Penal Code: The General Part, University Bookshop, Sharjah, 2014, pp 106-129.

⁴⁴ Abedalftah, M. Explanation of the UAE Code of Crimes and Punishments: The General Part, Dar Alafaq Publishers, UAE, 2022, p309.

⁴⁵ Abu Dhabi Court of Cassation, Criminal Session, Appeal No. 483 of 2011. See also Abu Dhabi Court of Cassation, Criminal Session, Appeal No. 272 of 2013, session held on 22/4/2013.

(Article 96). Furthermore, Article (101) empowers judges to exercise their discretion in pardoning offenders if they deem it appropriate, considering circumstances related to either the offender's personal status or the committed crime. These circumstances, referred to as mitigating judicial circumstances, encompass factors such as the offender's age, personal history, or the surrounding circumstances of the offense.

According to Articles (100) of the UAE Code the effect of mitigating legal excuses on reducing the punishment in misdemeanors is as follows:

- 1) If the punishment has a specific minimum limit, the court is not bound by it.
- 2) If the punishment is imprisonment and fine, the court may choose one of them.
- 3) If the punishment is imprisonment without a specific minimum limit, the court may replace it with a fine.

If a mitigating judicial circumstance is present, the offender may also qualify for an additional reduction in punishment as outlined in Article (101). This means that in a single crime, if both a mitigating legal excuse and a mitigating judicial circumstance are present, the offender's sentence can be subject to two consecutive reductions. To this effect, Article (106) states that "if aggravating circumstances coincide with mitigating legal excuses or mitigating judicial circumstances in a single crime, the court is required to apply the aggravating circumstances first, followed by the mitigating excuses, and then the mitigating circumstances. However, if there is a difference in the impact or strength between the aggravating circumstances and the excuses, the court retains the discretion to prioritize the more significant factor".

Therefore, if, for example, a misdemeanor, which carries a minimum imprisonment term of one year, is committed with an honorable motive, the judge is obligated to reduce the punishment to the minimum limit of one month, pursuant to Article 100(1). Additionally, if the judge wishes to consider mitigating circumstances, they have the discretion to replace the one-month imprisonment with a fine. This means that the punishment can be further reduced to a monetary penalty due to the application of both mitigating excuses and circumstances. In such a scenario, the judge holds the authority to issue a judicial pardon instead of imposing a fine, if it aligns with the circumstances of the case and is deemed appropriate.

As per Article (106), if an offender commits a misdemeanor that carries both imprisonment and a fine as penalty. Suppose there are mitigating excuses and circumstances that work in the offender's favor. In this scenario, the judge must first consider the mitigating legal excuse and select one of the two sentences available. If the judge decides to impose a fine and a mitigating circumstance exists, no additional reduction of the sentence is possible according to Article (106). However, in such a situation, the judge retains the authority to exercise judicial pardon and may choose to grant it to the offender.

In a similar vein, when the prescribed penalty for a crime is imprisonment without a specified minimum term, the judge holds the authority to replace the punishment with a fine based on mitigating legal excuses. In this situation, considering mitigating circumstances does not provide any advantage, as Article (100) prohibits any additional reduction in the penalty. As a result, granting the judge the power of judicial pardon may address such cases.

4. THE EFFECTS OF JUDICIAL PARDON

The application of judicial pardon necessitates the absence of any verdict that imposes a penalty specified by the legislator for the crime covered by the pardon⁴⁶. Judicial pardon encompasses both primary penalties and subsidiary penalties, whether they are complementary or ancillary. Although ancillary

⁴⁶ Ali Hamouda, *supra*, p. 347.

penalties are enforced by law and do not require criminal judgment, their execution is contingent upon the imposition of the primary penalty. In the case of judicial pardon, the judge naturally refrains from pronouncing the primary penalty, and thus no ancillary penalties shall follow.

In cases where exemption from punishment is granted, it is the responsibility of the judge, according to Article (152), to provide the offender with suitable advice and guidance, warning them that they will not be eligible for future exemptions. This cautionary measure ensures that the offender understands the exceptional nature of the granted exemption and is aware that it will not be extended in future instances.

As per UAE judiciary, individuals who have been granted judicial pardon from a penalty are not allowed to appeal the judgment before the Court of Cassation due to the lack of a legal interest in the appeal. This ruling was affirmed by the Federal Supreme Court on February 29, 2016⁴⁷. The case involved an appellant who was initially acquitted of charges related to assault and insult against the complainant. However, the Public Prosecution lodged an appeal, leading the appellate court to overturn the acquittal and convict the appellant while also granting her judicial pardon. Subsequently, the appellant appealed the decision of the appellate court before the Federal Supreme Court, arguing that the judgment granting judicial pardon was flawed and should be annulled as it was rendered without the consent of the complainant. The Federal Supreme Court rejected this argument based on the principle that an appeal must have a valid interest, meaning that the appellant must have a judgment against them. The court dismissed the appellant's requests, deeming them legally unfounded, considering that the appealed judgment ruled in favor of the appellant by granting her judicial pardon from the penalty.

In our view, while acknowledging that the acceptance of any appeal requires that the appellant must have a vested interest in the appeal, the Federal Supreme Court has determined that the issuance of a judgment granting judicial pardon from the penalty eliminates the interest in filing an appeal. However, this interpretation warrants reconsideration because the court should have considered that a judgment of judicial pardon from penalty is a conviction without the imposition of a punishment. Thus, it cannot be regarded as a judgment of acquittal, despite not imposing a criminal penalty. As a result, the appellant's interest in appealing against this judgment remains valid in this case.

The tangible consequence of a pardon is evident in the elimination of the prescribed penalty for the committed crime. Granting a pardon means that no punishment will be imposed, even though the perpetrator's culpability has been established. The exclusion of penalties also encompasses situations related to prohibitions and disqualifications, which can be enforced either by law or through a judicial ruling, regardless of their nature⁴⁸. It is important to emphasize that a pardon from the penalty does not equate to acquittal, as the guilt of the accused remains acknowledged. Thus, Articles (132-59) of the French Penal Code stipulates that the accused is not exempt from legal expenses. However, the pardon from the penalty itself cannot be equated to an actual criminal sanction. Consequently, this form of pardon cannot serve as a basis for considering the offender as a recidivist upon the commission of a subsequent crime.

According to Article (153) of the UAE Code, when a judicial amnesty is granted, it is important to note that it does not undermine or compromise the civil rights of the parties directly involved in the case or the rights of any third parties. This means that while amnesty may have an impact on the criminal aspects and penalties associated with the case, it does not undermine the legal rights and claims that individuals or entities may have in civil matters. This ensures that even in cases where amnesty is granted, the rights of

⁴⁷ The Supreme Federal Court, Session held on Monday, February 29, 2016, Criminal Appeal No. 483 of the year 2015.

⁴⁸ Jean – Paul cere et Ludivine Gregoire, repertoire du droit penal et de la procedure penal, Peine nature et prononce, Juin 2020, Dalloz & 156.

individuals or entities to pursue civil remedies, seek compensation, or assert their legal claims in civil matters are not compromised. The principles of civil law and the protection of civil rights continue to apply independently of any amnesty granted in the criminal context.

CONCLUSION

It has been seen that the concept of judicial pardon of punishment refers to the power vested in the judiciary to forgive the penalties imposed on individuals who have been convicted of a crime. The decision to grant a judicial pardon is typically based on various factors such as the circumstances of the offense, the offender's behavior, and the potential for rehabilitation. judicial pardon can be seen as an act of mercy and compassion, allowing the court to consider individual circumstances and provide a chance for redemption or rehabilitation, which is one of the primary goals of the criminal justice system. It acknowledges that individuals can change and provides an opportunity for a fresh start. Yet, judicial pardon of punishment can be a complex and nuanced issue. While it can offer opportunities for mercy, rehabilitation, and correction of injustices, it must be approached with careful consideration of public safety, fairness, and the overall goals of the criminal justice system. Striking the right balance between accountability and compassion is essential to ensure that the granting of a judicial pardon serves the interests of justice and the well-being of society.

Comparative analysis reveals that various cases of judicial pardon exist under both UAE and French laws with variations in scope and requirements. Contrary to French law, under the UAE law a judge may pardon offenders in five different cases pursuant to Articles (61, 102 and 152). First, when an offender who is under 21 years old commits a misdemeanor for the first time. Second, in cases involving mutual verbal abuse or assault. Third, when the offense is of minor nature, and the victim voluntarily waives their personal rights. Fourth, when an offender's actions exceed the limits of justification in good faith. French law treats this case as a mitigating circumstance rather than grounds for exemption from punishment. Moreover, in accordance with UAE law, if a single misdemeanor case involves both a mitigating legal excuse and a mitigating judicial circumstance, the offender may be eligible for a judicial pardon.

Contrary to UAE law, French law adopts a broader approach to judicial pardon, considering it as a general principle that can be applied to various forms of misdemeanors and violations. This applies if the judge is convinced of the perpetrator's rehabilitation and integration into society and if the resulting damage from the crime has been compensated. In contrast, the scope of judicial pardon under UAE law is limited to specific types of misdemeanors, excluding violations. Furthermore, French law allows for the deferral of penalties if the conditions required for judicial pardon have not been fulfilled. In such cases, the judge has a one-year time limit to render a decision on whether to grant the pardon or impose the sentence if the conditions are not met. It is important to note that under both laws, judicial pardon does not equate to a verdict of acquittal, nor does it imply a criminal penalty verdict, regardless of the offender's proven guilt.

Based on the analysis conducted in this paper, we can propose the following recommendations for potential reform of the UAE Code of Crimes and Punishments: Firstly, it is advisable to revise the UAE code to explicitly define the purposes and objectives of penalties, while also highlighting the principle of the necessity of punishment. This clarification would assist judges in effectively determining suitable penalties. Secondly, it is recommended to expand the scope of judicial pardon to include all types of misdemeanors and violations, similar to the approach adopted by French law, rather than confining it only to the specified misdemeanors mentioned in Article 152.

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