Significant Amendments to the UAE's Criminal Procedures Law

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A new Decree by Federal Decree-Law No. 17/2018 was issued to amend some of the provisions of the Criminal Procedures Law, Federal Law No. 35/1992 ('CPL'). There were changes and new additions comprising together around 54 articles in the CPL. This article outlines some examples in order to give an overview of the amendments:

1. Penal order

Definition

In line with Federal Decree-Law No. 17/2018, Article 332 of the CPL now defines the penal order as a judicial order issued by a member of the Public Prosecution who decides on the merits of a criminal case where he does not see a reason for dismissing or referring it to the competent Court, in the case of certain misdemeanours and violations.

Specific crimes

Further to the amendments, Article 333 of the CPL now notes that penal orders shall apply to misdemeanours and violations referred to in the applicable laws in the UAE which provides for the following penalties: (i) a fine; or (ii) imprisonment and/or a fine. The Attorney General is the one to issue a decision identifying the misdemeanours and violations that would be subject to penal orders.
Penal orders will not apply to certain crimes as specified by Article 334 of Federal Law No. 35/1992. This includes crimes affecting state security and its affairs, or crimes that involve mandatory deportation.

Applying a fine

Pursuant to the amendment, Article 335 of the CPL notes that a specific member of the Public Prosecution may issue a penal order against someone who is proven to have committed the crime (if applicable) to compel him/her to pay a fine as prescribed by the law.

Amending and cancelling the Penal Order

According to the new amendment, Article 344 of the CPL provides that the Attorney General has the right to amend or cancel the penal order within 30 days of the date of its issuance, or amend it as of the date of waiving the objection filed by the accused party. The Attorney General may issue the required decisions and instructions to execute the provisions of the section regulating the penal order.

2. Placement Under Electronic Probation

This is a measure applied by the authorities to a party, usually instead of imprisonment, with the aim of confining him/her to a specific place, such as his/her residence (known elsewhere as house arrest).

Definition

Pursuant to Federal Decree-Law No. 17/2018, Article 355 of the CPL defines placement under electronic probation as 'the deprivation of the accused or convicted party from leaving his place of residence or any other specified location, in other times except as allowed to him'. This is specified by an order issued by the Public Prosecution or the competent Court as the case may be. Remote monitoring is carried out using electronic means and the person subject to this will be obligated to carry a built-in electronic transmitter throughout the period of placement under electronic probation.

Factors affecting the location and timings for monitoring

Receiving medical care or pursuing education or other circumstances would be considered when deciding on the timings and location.

Remote controlling

Pursuant to other articles such as Articles 356 and Article 357 of the CPL, the Cabinet, based on a proposal from the Minister of Interior, would specify the means, controls and mechanisms used in executing the electronic probation process. Privacy, dignity and safety of the party being monitored will be considered when deciding on the foregoing electronic means.

Specialised officers

In line with new amendment, Article 358 of the CPL provides that certain officers in the police department shall specialise in monitoring the compliance of the party being monitored, in line with the judicial order or judgment. They may visit the specified location to ensure that the monitored party is abiding by its obligations. A report showing the results of the foregoing should be submitted to the Public Prosecution.

Temporary Placement Under Electronic Probation

Apart from the above, Article 361 of the CPL provides that the Public Prosecution may issue an order to temporarily place an accused party under electronic monitoring upon his/her approval or based on his/her request instead of temporarily keeping him/her in custody. Likewise, said order will identify the residence or the location in which the accused party needs to be confined as per the times specified in the order.

Restriction on communication

Furthermore, under Article 362 of the CPL, the Public Prosecution may stipulate that the accused party may not contact other criminals, accomplices or the victim, without prejudicing his/her right to contact his/her legal representatives.

Crimes that do not allow for Electronic Monitoring

Article 363 of the CPL notes that it is not allowed to issue an order to temporarily place the accused party under electronic monitoring in relation to crimes which carry a sentence of lifetime imprisonment, execution, crimes affecting the internal or external security of the state or crimes where deportation is mandatory.

The new amendments of the CPL also go on to address specific issues relating to electronic monitoring. In other parts of the CPL, and out of consistency, some articles have been amended to include events where an accused party is the subject of electronic monitoring.

3. Penal Reconciliation

Pursuant to Federal Decree-Law No. 17/2018, amendments were made to existing articles, and new sections that tackle certain topics were added, one of which is Penal Reconciliation, which aims to end the dispute in a criminal matter in an amicable manner ('**Penal Reconciliation**').

Federal Decree-Law No. 17/2018 introduced a new section ('Section 2') encompassing around nine new articles solely addressing Penal Reconciliation.
According to the Federal Decree-Law No. 17/2018 and amongst others, Article 346 has been newly added to the CPL. It provides for an option for the Public Prosecution or the Criminal Court to execute the procedures for Penal Reconciliation pursuant to an agreement between the victim and the accused party. This is in line with the provisions in this new Section 2.

If Penal Reconciliation occurs, the criminal case would be closed or the execution of a judgment would be stayed, whichever the case may be.

Exhaustive list

A new article, namely article 347 the CPL, now refers to specific crimes where Penal Reconciliation would be permitted in relation to misdemeanours and/or violations outlined in certain articles. Some of those crimes, where Penal Reconciliation is permitted, include:

1. physical assault;
2. certain types of threat and blackmail;

3. certain types of defamation;
4. recording conversations without approval;
5. taking pictures of someone without approval;
6. fraud;
7. issuing a bounced cheque;
8. breach of trust; and
9. trespassing.

It should be noted that, apart from the above, the existing law already provides for other events that would allow for Penal Reconciliation.

Deadline for Penal Reconciliation

In line with Article 347 of the CPL, Penal Reconciliation can occur at any stage of the criminal case, even if it is after the issuance of a judgment that becomes conclusive (i.e., with a res judicata effect).

Procedures for Penal Reconciliation

Pursuant to the new amendment, Article 348 of the CPL provides that the accused party (his specific agent, heirs or the specific agent of the heirs) may record a Penal Reconciliation in a document notarised by a competent notary public and signed by the victim or his heirs or their specific agent.

Pursuant to Article 349 of the CPL, when no Penal Reconciliation is initiated by the victim (or his heirs), the Public Prosecutor may offer the option of reconciling prior to referring the accused party to stand trial. The offer may be made to the accused party and the victim for a period of 15 days. This period may be extended by a further period of 15 days. A report should be issued to stipulate the procedures and record the Penal Reconciliation decision.

In line with Article 350 of the CPL, the criminal case shall proceed in accordance with the provisions of the CPL if the Penal Reconciliation was not made within the specified deadline referred to above. However, if the victim accepts Penal Reconciliation, a report shall be issued to evidence the Penal Reconciliation and the agreement of the parties, to be adopted by the Public Prosecution, after the parties sign it.

Similarly, if the victim reconciles with the accused party before the Criminal Court, the Criminal Court would record the reconciliation in the minutes of the hearing to be signed by the parties, provided that a judgment was not conclusive at that point in time. This is in line with the new Article of the CPL no. 351.

Conclusion

This article aims to provide a general overview on the new amendments to the CPL, which are considerably significant. The changes pursuant to such amendments, aim to introduce a new and specific legal framework in criminal matters with a view to enhancing the application of justice in a more modern, efficient and effective manner. Like all new amendments, these are yet to be tested and, it remains to be seen how these changes will be applied in practice.

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