

# CRIMINAL ORDER ISSUED BY THE PUBLIC PROSECUTION IN THE EMIRATE LAW: A COMPARATIVE STUDY

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## ABSTRACT

*The emirate legislature has applied the criminal order system and established the regulating rules thereof prescribed in articles (332- 345) in the Criminal Procedures Law and added the same to the decree in Law No. 17 of 2018 in order to settle simple criminal cases in a quick and short manner. As a result, a jurisprudential argument raised that granting the public prosecution this competency trespasses the principle of separation between the accusation and verdict powers. Therefore, it is considered a breach of the achievement of criminal justice as well as the principle that a criminal trial is open to the publicity, which allows individuals to monitor the course of trials. Moreover, to introduce the provisions of the criminal order in the emirate legislation, this study gives a clarification of the criminal order and the scope of its application. In addition, the study is concluded by the results and recommendations of the same. Most importantly, the emirate legislature shall not only grant the power to issue criminal order to the public prosecution but also give the judge of misdemeanor court the competency to look into the case, and a competent member of public prosecution the competency to perform the applicable procedures in the French legislation.*

**Keywords:** Public Prosecution, Criminal Order, Punishment, Crime, Problematic Implementation.

## INTRODUCTION

This research sheds light upon an issue relevant to the contemporary development of special criminal procedures. Even though this subject has been taken up in by some legislation the past, it has not been evaluated or commented upon separately and individual within the Emeriti's legislative scope. Thus, studying this subject in the emirate legislation is of a great importance, since it is an emergent subject in the criminal procedures law, which the legislature applied in the decree in Law No.17 of 2018, who also added a third chapter entitled "Special Criminal Procedures" and specified the first chapter to the criminal order.

The criminal order, as being an emergent system, aims at ensuring fast settlement of criminal cases, without prejudice to the fair trial guarantees; mitigating the pressure on courts, reducing the referral of criminal cases thereto, and responding to the practical perspectives, which require simplifying the litigation procedures; saving time, effort and expenses to the criminal case parties (Nicolas, 2015; Pradel, 1995; Casorla, 1995).

The emirate legislature has granted the public prosecution the power to issue the criminal order so as to make a decision in the criminal case subject, which may not necessarily be referred

to the competent court, especially in misdemeanors and offences crimes. This order is valid without investigation or even of the accused is absent. As a result, this order leads to the termination of the criminal dispute, unless the accused initiates an objection within the defined legal duration.

Therefore, the criminal order is not subject to the normal trial procedures, since this system aims to make the order procedures simple and fast, and thus raises many questions, such as:

1. Does the criminal order contradict with the most vital constitutional principles; separation between the power of accusation and the power of trial?
2. Does it also contradict with the guarantees of a fair trial?
3. Is the criminal order considered a judicial verdict?
4. Is the order considered valid to the Civil and Criminal courts?
5. What are the conditions of issuing the criminal order? Is the objection allowed in implementing the criminal order?

This research aims at answering such questions by explaining the essence of the criminal order and its legal nature, as well as at stating the scope of applying the order by presenting its conditions, procedures, and the method of opposition in executing the criminal order.

### **Nature of Criminal Order**

Before starting with the scope of applying the criminal order that is issued by the public prosecution, let us look at the nature of the order by looking into the detention of criminal order and its legal nature.

**Criminal Order Definition:** Jurisprudence defined the criminal act as a judicial order which settles the subject of criminal case without a precedent procedure of a trial held in accordance with the general rules (Mahmoud, 1988 & Medhat, 2000). In another definition, it is a decision which entails a criminal punishment and is issued by the judge or a member of the public prosecution after reviewing the papers in the absence of the disputing parties without an investigation or a plea (Ra'oof, 1985 & Ahamd, 1999). It is also defined in the French jurisprudence as a judicial decision issued by the criminal judge in accordance with fast and simpler procedures compared to the normal criminal case.

The emirate legislature defines the criminal order (Article 332 of the emirate Criminal Procedures Law) as a judicial order issued by a member of the public prosecution to take a decision on the subject of the criminal case that is not to be referred to the competent court in misdemeanor or offences crimes, even if the accused is absent and without an investigation. As a result, the order terminates the criminal dispute unless the accused initiates an objection within the legal defined period.

Thus, we note that the criminal order is issued in crimes of misdemeanor or offences prescribed in the applicable legislations in the State, punishable by a fine only or imprisonment or a fine (Article 333 of the emirate Criminal Procedures Law). Moreover, the member of public prosecution shall issue the order based on the proceedings of the implications or proof of evidence without an investigation or a pleading. As a result, the order terminates the criminal dispute unless the accused initiates an objection within the legal defined period.

The criminal order can also be defined as a judicial order issued by a member of the public prosecution to take decision on the subject of the criminal case by a fine, according to proceedings of implications and proof of evidence without an initial or final investigation or a plea hearing.

### **Legal Nature of the Criminal Order**

The jurisprudence has no agreed upon the nature of the criminal order (Mahmoud, 1988 & Muhammad, 2002 & Jamal, 2011 & Mohammad, 2005 & Nicolas, 2015 & Florie, 2017). As a result, two doctrines emerged; the objective doctrine and the formal doctrine. On one hand, while some consider the objective doctrine as a conciliation offer to the accused, others consider it as a judicial decision or a verdict. On the other hand, the formal doctrine is based on separating the competent power in issuing the criminal order, either by the criminal judge or the public prosecution. Thereby, the criminal order issued by the criminal judge gives the mark of the criminal verdict, and separates it from the order issued by the public prosecution.

In order to determine the legal nature of the criminal order from the emirate legislature's perspective, we need to point out that the legislature has only granted the authority to issue the criminal order to the public prosecution in accordance with article 332 of the Criminal Procedures Law. Therefore, according to the provisions of the emirate law, the criminal order is not considered a criminal verdict, since the public prosecution neither enjoys the autonomy nor has the guarantees that are set for the judicial authority. Moreover, members of the public prosecution are subject to the subordinate authority in the public prosecution service (Article 2/57 from the UAE Judicial Authority Law), which is represented by a gradual organizational structure starting from representatives of public prosecution and ending with the public prosecutor. The public prosecutor, therefor, has the right to monitor and supervise all members of public prosecution on the judicial and administrative levels. (Article 56 from the UAE Judicial Authority Law)

Article 337 of Criminal Procedure Law also states, "A member of public prosecution, whose level is not less than the Head Prosecutor selected by the attorney general, shall have the power to amend or cancel the criminal order within 7 days of issuing the same. As a result, cancelling the order deems it as if does not exist and proceeding in the criminal case shall be in accordance with the methods prescribed in the criminal procedures law". The emirate legislature has also granted the public prosecutor the power to amend or cancel the order within 30 days of issuing or amending it as of the date of waiving the objection by the accused, even if it has been executed before, provided that the accused is informed of the same (Article 344 of the UAE Criminal Procedures Law). Therefore, it is not acceptable to indicate that a criminal order is valid unless it is amendable and can cancelled by decision of the administrative president as to whom he/she issued the order (Mohammad, 2005).

Thereby, I support one side of the jurisprudence (Medhat, 2000 & Mohammad, 2011) which considers the criminal order as a conciliation offer to the accused. Therefore, the legal basis of the criminal order in the emirate legislation is considered a conciliation offer as well, whereby if the accused accepts it and pays the fine, the order shall be cancelled. However, if the accused initiates an objection thereof according to article 339, the order shall be considered as if it did not

exist, and proceeding in the case shall be in accordance with the procedures prescribed in the law.

### **Scope of Applying the Criminal Order**

The emirate legislature has granted the public prosecution the power to issue the criminal order provided that the legal conditions are defined within the procedures mandated to issuing the order. Such procedures shall provide the method of issuing the order and the method of informing the accused of the same. Moreover, the accused shall have the right to object to the criminal order. After the criminal order becomes final and the objection is not acceptable, it is allowed to make an execution opposition on the order, as follows:

### **Conditions on Issuing the Criminal Order**

Conditions related to the crime: The emirate legislature, according to article 333 of the criminal procedures law, it is stated that criminal orders shall apply to misdemeanors and offences 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. Therefore, we note that that public prosecution may issue the criminal order to all offences and misdemeanors punishable by imprisonment or fine, on condition that the fine shall not exceed half its maximum amount (Article 335 of the UAE CPL, also article 69 of the Federal Penal Law defines the detention as: Detention is to place a convict in any of the punitive premises maintained for such a purpose for the term awarded to him. The minimum period of imprisonment may not be less than a month nor exceed three years, unless the law provides otherwise). Therefore, the competent public prosecutor shall neither issue the order in crimes and misdemeanors punishable by mandatory imprisonment, regardless of the duration of imprisonment, nor in misdemeanors punishable by imprisonment and fine.

The emirate legislature has also excluded the following crimes from the criminal order: (Article 334 of UAE Criminal Procedures Law)

Crimes of limits, retaliation and wergild – crimes against the security and interests of the state- crimes of influence on judiciary and abuse of its reputation, and disruption of judicial procedures- offences stipulated in Law No. 9 of 1976 – crimes that law do not application of penalty prescribed for- crimes punished under the law by the measure of deportation.

This conforms to the attitude of the Egyptian legislature, which, by virtue of article 325 14 of the public prosecution criminal procedures law, allowed for issuing the criminal order in all offences and misdemeanor articles which the law do not allow application of the imprisonment penalty prescribed for, provided that the fie does not exceed 500 EGP. (Equals article 296 of Libya CPL, and article 148 of the Kuwaiti CPL).

Unlike the emirate legislature, the criminal order in some legislation is limited to the offenses Fines only (article 205 of the Iraqi Law of Criminal Trials Origins, Article (194,195/A) of the Jordanian Law on Criminal Trials, Article (183, 182) of the Lebanon Law on Criminal Trials Origins), which restricts and limits the system circle. We also note that the fact that the emirate legislature has expanded the scope of applying the criminal order on offences and misdemeanors conforms to the practical considerations, which settle simple cases in a quick

manner. In addition, the simple and unessential crimes on which the order is issued characterize the criminal order, which can be excluded from the normal procedures without prejudice to the guarantees of a fair trial.

It is worth mentioning that the French legislation has mandated the criminal order in the Criminal Procedures Law, as well as has identified the scope of application of the order on offences (Article 524 Code du Procédure Penal Francase) and some misdemeanors prescribed in the Law. (Article 495 et Suivants Code du Procédure Penal Francase) It also has taken into consideration the accused personality. i.e. the precedent crimes that the accused committed and the criminal risk he/she represents are reasons to reject issuing the criminal order. (Article 495/3 Code du Procédure Penal Francase) Moreover, the French legislature has also stipulated in article 495 of the criminal procedures law that the convict's age shall be 18 or beyond upon committing the crime. However, the UAE law does not have a clear text which provides for not using the criminal order if the convict has precedent crimes and crimes are juveniles. We hope that the emirate legislature adds to article 334 of the Criminal Procedures Law two more cases; the existence of precedent crimes to the accused, and the age of the accused. i.e. it shall be less than 18 years upon committing the crime.

### **Conditions Related to Applying the Penalty**

The emirate legislature has decided on what most legislations decided upon, (Article (495) of the French Law on Criminal Procedures, Article (148) of the Kuwaiti Law on Criminal Procedures, Articles (324,325 repeated) of the Egyptian Law on Criminal Procedures, Article (205) of the Iraqi Law on the origins of Criminal Procedures, Article (146) of Oman Law on Criminal Procedures) which have implied that the criminal order shall only be issued with the fine penalty ( article 71 of the Federal Penalty Law) as an original penalty. Article 335 of the emirate law on Criminal Procedures stated that: *“member of the Public Prosecution may issue a criminal order against someone who is proven to have committed the crime (if applicable) to inflict the fine prescribed by law with not more than half of it, as well as the complementary penalties and fees”*. Thereby, the criminal order shall not be issued by a custodial penalty.

The emirate legislature has set a maximum amount of the fine to the competent prosecutor to inflict on the accused party, not exceeding half of it. Moreover, the Egyptian legislature has restricted the competent public prosecution with two limitations; the first provides that the fine shall not exceed 1000 pounds in misdemeanors that not punishable with imprisonment or a fine of exceeding 500 pounds. The second is fine shall not exceed 500 pounds on misdemeanors punishable by a fine not exceeding 500 pounds. (Article (325 repeated) from the Egyptian Law on Criminal Procedures)

It is worth mentioning that that the Emirate legislature determined the fine on misdemeanors by virtue of article 71 of the Penal Code stating, *“The penalty may not be less than one hundred Dirhams nor exceed one hundred thousand Dirhams in crimes, and thirty thousand Dirhams in misdemeanors”*. Accordingly, the fine penalty imposed by the criminal order may reach up to 150000 AED. However, since the criminal order is limited to the public prosecution and the fine amount is exaggerated, I suggest that the emirate legislature should reduce the fine to an amount not exceeding 75000 AED, and thereafter, shall grant the power to issue the criminal order to the judge of the competent criminal court.

Legislatures differ in terms of taking the subordinate penalties which follow the original penalty. The emirate legislature allows issuing the criminal order with a fine plus the complementary penalties and fees (Article 335 of the UAE Criminal Procedures Law), same as for the Egyptian, Libyan and Iraqi legislatures. Other legislatures, such as the Kuwaiti and Moroccan legislatures prevent imposing subordinate penalties and deem the fine penalty sufficient. In addition, the French legislature, in article 495, paragraph 1 of the Criminal Procedures Law, allows application of the criminal order in simple misdemeanors and offences punishable by a fine not exceeding 5000 AED. (Article 324 of the Egyptian Law on Criminal Procedures, Article 205 of the Iraqi Law on the Origins of Criminal Trials, Article 297 of the Libya Law on Criminal Procedures) It also allows issuing the criminal order as a substitute penalty to imprisonment with social service, provided that the accused party accepts said penalty pursuant to article 495-1 of the Criminal Procedures Law. (Article 357 of the Moroccan Criminal Procedures Law, Article (148) of the Kuwaiti Law on Criminal Procedures)

The emirate legislature, based on some estimated considerations, or upon a request from the accused party in misdemeanors punishable by imprisonment for duration not exceeding six months or a fine, has permitted the public prosecutor to issue an order which mandates the accused party to perform the social service measure instead of the criminal order imposing the fine. (Article 345 of the UAE's Criminal Procedures Law & 120, 120 repeated/1, 120 repeated/2, 120 repeated/3, 120 repeated,4 of the Federal Law on the Penal Code) In return, we notice that the Egyptian legislature does not allow for the infliction of a preventative measure in the criminal order. (Article 324 of the Egyptian Criminal Procedures Law, versus article 205 of the Iraqi Law on the Origins of Criminal Trials)

The order of substituting the criminal order with social service shall apply to essential information, methods of informing, objection cases, dates and opposition in executing the order, in cases of rules prescribed in articles (336, 338, 339, and 342) of the Criminal Procedures Law.

### **Competent Authority for Issuing the Criminal Order**

Comparative legislations differ (Mohammad, 2011) in determining the competent authority that issues the criminal order coalescing into several positions: the first allows for a number of competent judicial authority to issue the criminal order, while the second position considered only the verdict of judges as the only competent authority (Khalid, 2006. Article 205 of the Iraqi Criminal Trials Origins Law, Article 183 of the Lebanon's Criminal Trials Origins Law). The third position is to grant this power to the public prosecutor. In this case, the power is divided between the judiciary system and the public prosecutor, with each party having the right to issue the criminal order under certain circumstances. (Articles 323, 325 repeated of the Egyptian Criminal Procedures Law, Articles 297, 298 of Libya Criminal Procedures Law, Articles 145, 146 of Oman's Criminal Procedures Law)

The emirate legislature adopted the doctrine which limits the issuance of the criminal order only to the public prosecutor. Article (332) of the UAE Criminal Procedures Law states that the: *“member of the public prosecution appointed by the Public Prosecutor for crimes of misdemeanor and offences, which the provisions of article (333) apply thereto, issues a criminal order against a party who is proven for committing the crime. Such order entails the fine prescribed in the law, of an amount not exceeding half of it, plus the complementary penalties*

*and fees*”. However, the emirate legislature shall not give the power to issue the order only to the public prosecutor. Rather, it shall be divided between the competent members of office of public prosecution and the judge of the competent court of misdemeanors. For instance, the French legislature allows the public prosecution to present the order to the accused party at first, then file it to the Head of the Court for approval in accordance with the provisions of article (459/1) of the Criminal Procedures Law. As a result, this urges the public prosecution to finish the criminal case in a quick manner without trespassing the judiciary function, since the French legislation tends to separate the functions of the judiciary system, whereby the public prosecution makes the accusation and the judiciary system issues a verdict. Unlike the emirate legislature who put these two functions under the public prosecution responsibility.

### **Criminal Order Procedures**

The member of public prosecution appointed by the Public Prosecutor has the competency to issue the criminal order in misdemeanors and offences punishable by fine or imprisonment, or a fine decided by the Public Prosecutor. (Article 332 of the UAE’s Criminal Procedures Law, Article 325 repeated of the Egyptian Criminal Procedures Law)

The order shall be issued on the accused that is proven to have committed the crime via the evidence report or other evidence material. The order shall include the incident for which the accused was punished, the accusation; the law article applied thereupon; the punishment that the order rules; the case number; name of the accused parties and their personal information; date of issuing the order; and the name and rank of the Public Prosecutor appointed to issue the order. (Article 336 of the UAE’s Criminal Procedures Law, Article 326 of the Egyptian Criminal Procedures Law). We note that this procedure is also clear in the French legislation, which shall issue the criminal order including all the above-mentioned information. The order shall also be reasoned in misdemeanors, but not in offences.

### **Informing of the Criminal Order**

A competent member of the public prosecution, prior to issuing the order, shall verify that the judicial officer’s announcement to the accused party at the date of presenting the case to the prosecution. Otherwise, the member of the public prosecution shall order the officer to make the announcement. (Article 337 of the UAE’s Criminal Procedures Law)

If the order is issued or amended by the competent Public Prosecutor in the absence of the accused party, the latter shall be informed of the same according to the procedures prescribed in the Civil Procedures Law on informing of provisions.

The regulation of the Federal Law No. 11 of 1992 concerning issuance of the Civil Procedures Code in UAE, issued under the cabinet resolution No. 57 of 2018, Announcements has regulated the announcement and its procedures. Therefore, the person who shall be informed, may be informed via recorded voice or video calls, mobile text messages, e-mails, fax or equivalents from the modern technological media decided by the Minister of Justice or any other way the two parties agree upon. (Article (6) Regulation of Federal Law No.11 of 1992 on Civil Procedures Law) The legislature, by adding this method to the normal methods of informing, aims at making the procedures faster, and this conforms to the criminal order goals.

## **Amending or Annulling the Criminal Order**

The legislature, by virtue of articles (1/337, 1/344) of the Criminal Procedures Law has defined two cases upon which the order can be amended or annulled. In the first case the president of the prosecution appointed by the Public Prosecutor may amend or annul the criminal order within seven days from the issuance. In the second case the public prosecutor is entitled to do the same within 30 days from the issuance of the order or its amendment or from the date of the accused's waiver of his objection, even if it has been executed. In all cases, the accused shall be informed of the amendment or annulment of the order.

As a result, the amendment or annulment entail considering the criminal order as if did not exist, and proceeding in the criminal case shall be in accordance with the procedures prescribed in this law.

## **Objection to the Criminal Order**

The accused shall have the right to object to the criminal order within seven days from the date of issuance if he is present, or as of the date publication if he was absent or after its amendment. Moreover, the accused may file an objection to the public prosecution in writing, or online via the criminal electronic system. In all cases, the objection shall be documented and kept in the case file or in the criminal electronic system.

The objection entails considering the criminal order as it did not exist, and proceeding in the criminal case shall be in accordance with the methods prescribed in the Criminal Procedures Law. Hence, based on the accused's objection, the criminal court, while looking into the criminal case, is not bound to abide by the ruling of the criminal order.

If there are more than one accused person against whom the criminal order is issued, and some of them wish to object, while others do not, in this case, the objection entails considering the order as if did not exist, and the case shall be referred to the competent court for those who object. However, the criminal order shall be considered final and must be executed on those who do not object.

It is noted that objecting to the criminal order is not considered a challenge as in challenging the normal provisions, but a declaration of refusing the trial method which the order imposes thereupon and its request for proceeding with the trial procedures according to the general rules stipulated in the criminal procedures law. We also note that the French legislature gave the public prosecution the right to object to the criminal order issued by the criminal judge within ten days of its issuance, since the public prosecution is considered a key party in its capacity of representing society. The accused shall also have the right to object to the criminal order issued from the court within 45 days from being informed of the same. If the objection is not accepted or the legal duration thereof expires, and neither public prosecution nor the accused file any objection, the criminal order shall be executed pursuant to the provisions of article 495-3 of the criminal procedures law.



## Waiver of the Objection

The accused may file a waiver of his objection to the criminal order before summoning him to appear before the competent court to look into the criminal case. The waiver shall be verified and the competent public prosecution member shall not inform the accused of the summoning order to appear to the session so as the objection shows its influence. However, in case the accused is informed of the summoning order, he may refuse to file a waiver of the objection.

As a result, the accused's waiver of the objection deems it annulled and the criminal order shall be final and executed. In all cases, the court does not only abide by the objected-upon order upon examining the criminal case. (Article 339/3 of the UAE's Criminal Procedures Law)

## Executing the Criminal Order

The criminal order is considered final whereupon no objection is acceptable in the following cases:

1. If the accused executes the criminal order and pays the fine prescribed thereto;
2. If the date of objection to the criminal order expires without filing an objection, according to the procedures and dates prescribed in this regard. (Article 340 of UAE's Criminal Procedures Law);
3. If the accused waives his objection to the criminal order. For example, the accused files the objection on the criminal order and the session is scheduled to examine the case according to the normal procedures, but who files the objection fails to appear to the session.

In executing the criminal order, the general rules of deciding the amounts imposed on the accused shall apply and the penalty shall be dropped by the lapse of the period or if the accused dies as stipulated in chapters five and six of the fourth book of the criminal procedures law.

## Opposition in Executing the Criminal Order

Article 342 of the UAE's Criminal Procedures Law states that opposition in executing the criminal order is allowed in two cases; first, the criminal order is issued on person other than the accused; second, if the order is issued in a manner not conforming with the procedures mandated in the law, because the public prosecution member who issues the order is not competent to issue it, or if the order is issued in crimes which a criminal order shall not be issued, or if the accused is not informed of the order. In this case, the accused's right to accept or refuse the order is still available. Based on that, if the accused is absent, it shall be verified from his known or unknown address whether he was informed or not. However, if there is a strong obstacle hindering the accused from appearing to the session which presumes that the accused was informed of the criminal order according to the procedures and dates set by law, and that the accused filed his objection to the order to set a date proceeding in the case according to the normal procedures. In addition, it is assumed that the accused is fully aware of the session date, yet an obstacle made it impossible for him to appear to the it.

The accused or a representative shall submit the opposition request to the public prosecution, either in writing or online in the online criminal system. Such request shall be

verified and attached, or kept as required. A member of the prosecution shall submit the opposition request to the competent court in examining the case within 7 days of submission.

The court decides on the opposition without a pleading provided that it is valid for settling. However, if the court sees that settling with the opposition is not possible without a plea or a hearing after searching and examining the submitted papers and documents, a session shall be held according to the procedures prescribed in the second chapter of the first section in the fourth book of the UAE's Criminal Procedures Law. Therefore, the party who filed the opposition shall be summoned to attend the session to decide on the opposition after hearing the public prosecution and the concerned parties, either by rejecting it, thus resuming the execution, or by just accepting it.

As a result, accepting the opposition entails dropping the criminal order and considering it as if did not exist. Then, the court refers the case papers to the public prosecution to either issue a new criminal order thereof, or submit the case to the competent court. The court's verdict in the opposition may not be challenged. (Article 218 of the UAE's Criminal Procedures Law) However, in case of rejecting the opposition, the criminal order shall restore its power of execution since it is a final order that has the power of the ruled-upon order. Hence, the opposition shall be considered as if did not exist.

The opposing party, who fails to appear to the session, returns the criminal order to the power of execution, since it is a final order that has the power of the ruled-upon order. Hence, the opposition shall be considered as if did not exist. Yet, deciding on the opposition does not lead to stay of execution of the decided-upon penalty in the criminal order. However, the court may order a stay of execution until a decision is taken on the opposition. (Article 279 of the UAE's Criminal Procedures Law)

The criminal order is considered final and may not be objected to or amended or annulled, the order gains the power of the ruled-upon subject. In this case, it is not allowed to refer back to the criminal case again. Hence, the criminal order shall have the power of the objective verdict, and the accused shall not be brought to trial again based new arising evidence or an event, as long as the accused has the legal basis to pay to resolve the case.

As for the *res judicata* of the criminal order on the civil case, the emirate legislature has applied in article (341/2) of the Criminal Procedures Law the opposite of what is applied in the *res judicata* of the criminal order (Article 269 of UAE's Criminal Procedures Law). The legislature, in this regard, states that "What the order in the criminal case settles does not have the *res judicata* before the civil court."

## RESULT & DISCUSSION

1. The emirate legislature has granted a member of the public prosecution the power to issue the criminal order based on the inferences or the evidence of proof without conducting an investigation or a hearing session.
  2. The public prosecution may issue the criminal order in all offences and misdemeanors punishable by imprisonment or fine, on condition that the fine amount is not more than half of its amount.
3. The emirate law does not have an article preventing taking the criminal order if the accused has precedent crimes, and in cases of accusing juveniles.
  4. The president public prosecution appointed by the Public Prosecutor may amend or annul the order within seven days of the issuance date. The Public Prosecutor may also amend or annul the order within 30 days of

issuing or amending the order, or from the date of the accused's waiver of his objection to the criminal order, even if it was executed.

5. What the order in the criminal case settles does not have the res judicata before the civil court

### **RECOMMENDATION**

1. I suggest that the emirate legislature sets the fine penalty not exceeding (75000) AED, and refers the power of issuing the order with a fine afterwards to the judge of the competent criminal court.
2. I suggest the emirate legislature shall not limit the power to issue the order only to the public prosecution. Rather, it shall be divided between the competent public prosecution member and the judge of the competent court of misdemeanors.
3. We wish that the emirate legislature adds two cases to article (334) of the Criminal Procedures Law: First, existence of the precedent crimes committed by the accused. Second, if the accused's age is under 18 years upon committing the crime.

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