

COMMUNITY SERVICE AS AN ALTERNATIVE PENALTY TO SHORT-TERM IMPRISONMENT IN THE UAE AND MALAYSIA: A COMPARATIVE LEGAL ANALYSIS

RAED S.A FAQIR¹, EHAB M A ALROUSAN²

¹ Associate Prof in Criminal Law, College of Law, American University in the Emirates (AUE), UAE

¹ Associate Prof in Criminal Law, Faculty of Law, Al- Balqa' Applied University (BAU), Jordan

² Associate Prof in Criminal Law, College of Law, American University in the Emirates (AUE), UAE

Correspondence Author: Dr. Raed S A Faqir

Email: ¹ Raed.faqir@aue.ae, ² ehab.alrousan@aue.ae

Abstract: *The United Arab Emirates (UAE) was one of the first Arab countries to implement a community service system as an alternative to the short-term imprisonment. This study aims to identify the nature of community service as an alternative to imprisonment, its regulations, and its application in UAE and Malaysian legislation, as well as in comparative law. The research utilizes normative legal research, analyzing laws and regulations related to community service in UAE and Malaysian legislation. This includes examining the conceptual framework of community service penalties, their legal nature, advantages, and scope, as well as the procedures for implementing such penalties. The discussion in this research employs a qualitative method, specifically the descriptive, analytical, and comparative approach. This involves analyzing and comparing the legal rules of the UAE Federal Law on Crimes and Penalties, the Malaysian Criminal Procedure Code, and complementary penal laws of the two countries. The study's findings indicate the positive role of community service in addressing social and familial issues resulting from imprisonment, as well as alleviating overcrowding in penal institutions. The similarities and differences between community service in the UAE and Malaysia are also discussed, with recommendations made for legislative amendments to this penalty in both countries.*

Keywords: *Community Service; Working for the Public Good; Community Reform Alternatives; UAE and Malaysian Laws.*

INTRODUCTION

The community service penalty is one of the alternatives to the traditional custodial penalties. This alternative punishment is one of the byproducts of rehabilitative justice and it is one of the effective penalties in dealing with the negative effects of short-term imprisonment. However, this punishment has a peculiarity that differs from other penal systems. In UAE, the federal legal system adopts this penalty as part of the legislative efforts aim at humanizing punishments within the scope of criminal legislation. This penalty is consistent with the principles of human rights protection, while at the same time meeting the needs of criminal justice and does not allow the perpetrator to go unpunished. The community service model serves as an alternative to punitive measures, aligning with the principles of the social movement school that emphasizes substitution and replacement. According to criminologist Filippo Gramatica, criminals often suffer from social inadequacy, and society should aid in their social reintegration. Similarly, criminologist Mark Ansel believes that the main goal of criminal justice is to rehabilitate and reform offenders, helping them to reintegrate into society (Khalfi, 2019).

But why this shift in the UAE legislation towards adopting this type of punitive model? Here, it becomes clear the extent to which the Emirati criminal legislator is aware of the failure of traditional punishments to reduce the crime rates that are still increasing continuously, which incurs high costs for the state in building penal facilities and providing services to inmates in prisons, in addition to the aggravation of the criminal situation of prisoners due to their mixing with the rest of the inmates, where they learn new techniques for committing crimes and thus exacerbate their criminal risk

The importance of the topic stems from the fact that the social service penalty as an alternative to short-term imprisonment is in line with the modern criminal policy of the United Arab Emirates, and



it is consistent with the idea of preserving human dignity and protecting human rights, in addition to achieving the functions of punishment such as deterrence, rehabilitation, reform and social reintegration. In addition, the community service penalty contributes to maintaining the physical and psychological health of the convicted person because he carries out his sentence in a free environment and not in prison. Also, this punitive model enhances social cohesion and family cohesion, so that a person who submits to this model can live with his family, continue to work, and support his family financially.

Accordingly, the scientific significance of the study stems from the dynamics of its subject, the trends of modern criminal legislation towards adopting the community service system, and the possibility of developing this system within the Emirati legal environment by monitoring and following up contemporary developments of the experiences of other legal systems and benefiting from them. As for its practical significance, it lies in the role that the community service penalty in reforming and rehabilitating offenders, expanding the scope of its application through judicial application, and revealing the legislative vacuum in the UAE legal system of the alternative punitive models to propose the legal solutions for them.

The current study attempts to identify the conditions and procedures that guarantee the implementation of the community service penalty in the UAE legislation and to examine its the punitive value of the in achieving the functions of politeness, rehabilitation, and social re-integration. In addition, this study aims to verify the implications of applying the community service penalty as an alternative to short-term imprisonment. The study deals with several issues related to the community service, including: the legal nature, conditions, procedures, effects, purposes, and characteristics of community service of community service, as well as the Emirati vision and criminal policy towards this penalty, and understanding its future considering that policy.

The study deals with several axes, the first axis deals with the conceptual framework of the community service penalty and its legal nature, the second axis deals with the study of the characteristics, advantages, and scope of application of the community service penalty, and the third axis deals with the conditions and procedures for implementing the community service penalty.


METHODOLOGY

The aim of normative legal research is to combat criminal activity and promote justice in society by rehabilitating and reintegrating perpetrators. Due to budgetary constraints and the negative impact of short-term imprisonment on an individual's productivity and sense of responsibility towards society, new punitive methods have been sought. This study employs a normative approach to examine the community service system as an alternative to short-term imprisonment in both UAE and Malaysian legislation. The failure of short-term deprivation of liberty to achieve its reform objective and the lack of substantial deterrence in many crimes makes it counterproductive and increases the risk to individuals and society. The data collected is edited and coded for further analysis to comparative issues of the community service system in both countries. Qualitative analysis of selected legislative rules and norms is conducted based on secondary data that corresponds to the subject of the problem. This research provides a critical review of relevant information to establish a strong foundation for the concept and highlights the importance of legal norms, principles, and practical aspects in assessing the community service system as an alternative penalty to short-term imprisonment in UAE and Malaysian penal legislation.

RESULT AND DISCUSSION

1. The Conceptual Framework of the Penalty of Community Service and Its Legal Nature

In the Arabic linguistic concept, the word “service” means to help or perform some tasks and duties and perform certain functions that help others. Linguistically, the word “society” denotes the different groups of people or human groups that live on the same land for long period of time and establish ties between them that embody the social system (Al-Muhairi & Noor, 2019). In legal terminology, the penalty for community service is defined as “obligating the offender, by virtue of a court ruling, based on the study of the psychological, health and educational qualifications of the



convicted person, to a specific type of work in a government institution for a specified period of hours or days during the month” (Shehab, 2013). It is also defined as “a criminal penalty that is an alternative to imprisonment, whereby the judge can - within the limits of his discretion - after pronouncing the original penalty, offer the convicted person, with his consent and in accordance with legal rules, to perform specific works for a certain period of time for the benefit of society” (Ashoyer, 2019). This concept is also defined as “obligating the convicted person to perform certain works to serve the community free of charge during the period decided by the court, within the limits stipulated by law” (Otani, 2009). In legislative meaning, the concept of the penalty of community service is defined under section (121) of the UAE Federal Crimes and Penalties Law No. 31 of 2021. It says that the community service penalty means “obligating the convicted person to perform one of the community service acts specified by a decision of the Council of Ministers, within one of the institutions or establishments to be determined by a decision of the Minister of Justice after coordination with the competent authorities or by a decision of the head of the local judicial authority. The judgment for community service is applicable only for misdemeanors, as an alternative penalty to a penalty of imprisonment not exceeding six months or a fine, and for a period not exceeding (3) three months.

It appears from the definitions that the relationship between the doctrinal and legal definition of the concept of social service punishment is based on the common meaning of discipline and reform. The essence of this system is to compel the convicted person to work in community service, which ultimately leads to the achievement of the function of deterrence and reform, which is the same function that traditional punishments seek to achieve.

2. The Characters, Advantages and Scope of the Community Service Penalty

One of the most important characteristics of the community service penalty is: First, it is a consensual penalty that is applied only with the consent of the sentenced person, where both the UAE and Malaysian law do not require a specific form of consent. The consent may be verbal or written, and the reason behind obtaining the consent of the convicted person to implement this system is avoid the issue of “forced labor”, which is already prohibited by the international treaties. Usually, the consent of the convicted person is obtained during the issuance of the sentence to ensure that the person has psychological acceptance and an automatic response to the implementation of community service. This approach is rightly supported, because obtaining the consent of the convicted person is an essential guarantee for the person response to correct his behavior and social rehabilitation, as this penalty became useless in the case of coercion. Secondly, community service is a useful work for society that is performed free of charge. However, this feature is not addressed in any of sections (121-125) of the UAE Federal Crimes and Penal Code regarding community service, as the phrase “without any monetary gain” is not used in those sections. In comparison, it is noticed that section 293(1) ((e) (ii) of the Malaysian Criminal Procedure Code shows that the social service is free of charge for the convicted person, except that it is with monetary gain, paid by the party for which the convicted person worked to the prison or local authority. This can be interpreted in some way that the Malaysian law made community service unpaid for the convicted person, but at the same time the financial consideration for his work is paid to the prison or the local authority, but the same is not referred to by the UAE legislation. This justifies the proposal to amend section 121 of the UAE Law on Crimes and Penalties by adopting the legal formula contained in section 293 of the Malaysian Criminal Procedure Code by adding the phrase “which involves payment to the prison or local authority.” In addition, making community service without a direct payment of the wages to the convicted person makes him feel in soreness and pain, which may encourage him to believe in the culture of volunteer for the benefit of society, and then achieves compensation for the damage caused to society. Third, the convicted person must undergo a medical examination, which is not addressed in the legal provisions concerning community service in the UAE or Malaysian legislation. However, the judge can follow the general rules stipulated in the laws of penal correctional houses in both countries. Moreover, it is very useful for applying the community service to subject the convicted person to a medical examination, because this enables the judge to know the health capacity of those who are subject to this an alternative system and to know whether they suffer from



serious or contagious diseases that threaten the health security of the public facilities and institutions in which this system is implemented. In this context, it is suggested that the Emirati and Malaysian criminal legislators to adopt what is stipulated in Article 132 (2-5) of the French Penal Code, which restricts the powers of the judge in applying the community service to the need to ensure the fitness and health capacity of the convicted person.

The most significant advantages of the community service system as an alternative penalty to imprisonment or a fine are that it is a modern rehabilitative and reformatory method (Abdul Wahhab, 2014), which avoids the convicted person from social stigma, and keeps the person within the atmosphere of community and family (Al-Shayyab & Salama, 2019). While The economic and social advantages of this system are namely, it reduces the economic burdens resulting from the imposition of the short-term prison sentences, preserves the sources of livelihood for families, and preserves the workforce in society (2019 Abu Hijleh,), and socially this method also contributes to prevent the social isolation of the convicted persons and keep them closer to their culture, customs and traditions of the society. In addition, this system keeps the convicted persons within the family climate, and ensures the cohesion of their families, preserves their livelihood, and strengthens the confidence of the employers in their social role, as well as establishes the social peace for both the perpetrators and the victims, and burying their hatred and retaliation (Ali, 2016). The application of the community service penalty also reduces the phenomenon of prison overcrowding (Othman, 2013), which may affect the jail's inmates with health and psychological diseases and avoids those convicted with minor crimes from mixing with prisoners of high criminal risk, in addition to that it reduces the economic costs on the state in caring for prisoners according to the rule of partnership with the private sector (Omar, 2009).

The domains of the application of community service punishment are divided into two categories: objective and personal. Firstly, the objective domain of community service punishment includes misdemeanors and violations, but not felonies. The differences between the Emirati and Malaysian laws in the application of community service are apparent in several issues. This system is used as an alternative punishment to imprisonment and fines in sections 121-125 of the UAE Law on Crimes and Penalties, and it includes all misdemeanors that are actually punishable by a sentence of no more than six months. Meanwhile, in Malaysia, this system is applicable to all crimes known as "custodial sentence" and fines, which means that the application of the community service system includes both misdemeanors and felonies in Malaysian law. Secondly, as for the personal domain of the application of community service punishment in both legislations, its general outlines have been defined in the UAE Federal Law on Crimes and Penalties. However, it is noticeable that Section 121 of this law did not specify the beneficiaries of the community service system. Nevertheless, the phrase "the convicted person" is used to indicate the possibility of applying community service as an alternative punishment to short-term imprisonment for all natural persons, citizens and foreigners, adults and minors.

Therefore, the UAE legislation, unlike Malaysian legislation, does not specify a particular group of people who would benefit from this system. In contrast, we find that community service in Malaysian law is applied as an alternative to imprisonment on a voluntary and unpaid basis for a specific age group, which is the age group of 18-21 years. However, at the same time, the system of compulsory labor allows it to be applied to age groups over 21 years old. According to the Malaysian Criminal Procedure Code, the combined application of compulsory residence with community service is applied to the youth group aged 18-21 years old, which means that the group of beneficiaries of this system is specified, unlike the UAE law, which is evident from Section 293 of the Malaysian Criminal Procedure Code, which stipulates that community service shall be imposed on the youth group aged (18-21) years old for a specified period and in a specific place, subject to restrictions and conditions determined by the competent court. Unlike Malaysian law, we find that UAE legislation expands the scope of convicted persons who can benefit from the community service system, with the exception of juveniles, which means that this system can be applied to all age groups of men and women, whether young or old, which is a sound and correct approach that Malaysian legislation did not adopt.



3. Conditions and Procedures for Implementing Social Service Punishment

The UAE and Malaysian legislation stipulate community service as an alternative punishment. In the UAE legislation, this issue is addressed in Federal Law on Crimes and Penalties No. (31) of 2021, while in the Malaysian legislation, the community service system is addressed in the Criminal Procedure Code of 2001. These laws include legal conditions for applying this system, which can be discussed as follows:

3.1: Conditions Related to the Convicted Person

These conditions are related to the person who has been sentenced to community service, and among these conditions:

Firstly, the convicted person must be a natural person: One of the most important conditions for the application of the community service penalty is its applicability to natural persons rather than legal persons. Companies, institutions, associations, and endowments are excluded from the scope of this system. In both the UAE and Malaysian legislations, this system is applied only to accidental criminals who do not pose any criminal danger. Although there are some differences between the legislations in the areas of application, the Malaysian law restricts the application of this system to the youth category of 18-21 years old (Othman, 2013). On the other hand, the UAE law does not restrict its application to a specific age group. The possibilities of application include all age groups, including males and females, minors and adults, citizens and residents of the UAE. However, at the same time, we note that the UAE law for juveniles and homeless people does not contain any provision regarding the community service system as an alternative penalty to traditional penalties imposed on the juvenile category (Al-Shayyab & Salama, 2019).

Secondly, explicit consent from the convicted person to apply the community service penalty. This condition requires the personal attendance of the convicted person in the trial proceedings, including the sentencing session, and his/her explicit agreement to apply this penalty. In all cases, the court cannot obtain his/her consent outside the court or through his/her lawyer, except with explicit authorization. It is the convicted person's right to accept or reject the court's offer to apply this penalty (Moghaddam, 2011).

But what if the sentenced individual remained silent and did not respond to the court's offer? This silence cannot be interpreted as an implicit agreement to perform community service. The sentenced individual's agreement to comply with this system must be explicit. This approach has been adopted in the UAE and Malaysian legislations, and it is in line with Article 8 of the International Covenant on Civil and Political Rights of 1966, which states that "no one shall be required to perform forced or compulsory labor," and also with Article 4 of the European Convention on Human Rights, which states that "no one shall be required to perform forced or compulsory labor". The reason for seeking the sentenced individual's consent to apply this system is to ensure their voluntary compliance with providing the service to the community.

In UAE legislation, this requirement is not addressed in Sections (121-125) of the Federal Law on Crimes and Penalties. Instead, we find that the legal wording used in Section 121 of this law indicates the absolute authority of the court to impose this penalty, even if the perpetrator does not agree to it. The phrase "community service is the obligation of the convicted person to perform one of the works..." is mentioned, and this wording contradicts the idea of voluntariness in the application of this system. Similarly, we find that the Malaysian Criminal Procedure Code does not require this condition in the provisions of Section 293(1)(e) (i-iii), which means that this penalty is mandatory, contradicting its purpose. Therefore, I propose adding the condition of the convicted person's consent to perform community service to Section 121 of the UAE Federal Law on Crimes and Penalties, as well as to Section 293(1)(e) (i-iii) of the Malaysian Criminal Procedure Code (Rahim, Zainudin &, Tengku, 2013), by drawing on the French approach in this regard, as the requirement of the convicted person's consent is mentioned in Article 131(8) of the French Penal Code.

Thirdly, the sentenced individual should not be a repeat offender or a recidivist. In UAE legislation, recidivism is considered an aggravating circumstance. According to Section 8 of the UAE Law on Crimes and Penalties, if a person is sentenced to two imprisonment sentences, each lasting at least one year, or to three imprisonment sentences, one of which lasts at least one year, for theft, fraud,



breach of trust, forgery, hiding items obtained from these crimes, or attempted crimes, and then commits a misdemeanor of the aforementioned crimes or an attempted crime, the court can impose temporary imprisonment for a period not exceeding five years, after sentencing the individual for the last of these punishments. According to Section 9 of the same law, the court cannot order community service as a penalty for any of the misdemeanors mentioned in Section 8 and specified in Sections (355, 464, and 468) of this law. The reason for the inability to apply community service as a penalty is the criminal danger of the perpetrator, the possibility of recommitting the crime, the unsuitability for implementing the penalty in an open environment, and the need for convict person to undergo qualification and rehabilitation programs inside the prison.

Compared to Malaysian legislation, the possession of a firearm is considered an aggravating factor, where section 75 of the Malaysian Penal Code states that a repeat offender, who has previously been convicted of any offence punishable with imprisonment under Chapter XII or Chapter XVII of this law (Malaysian Penal Code of 1997/ Act w.e.f 7 August 1997), shall be punished with imprisonment for a term of 3 years. According to section 295(2) of the Criminal Procedure Code, the convicted person is subject to police supervision after completing this punishment, not a conditional release system.

This means that the Emirati and Malaysian legislations have agreed that the reoffender should not be benefited from the community service system. The judge is required to verify the criminal status of the convicted person through the judicial record, and if the criminal recurrence is established, a community service order is not issued, and the punishment is intensified unless the conviction is expunged. In this case, there is nothing to prevent the imposition of a community service sentence. In this regard, we suggest that the Emirati legislator clearly refer to this condition in the provision of Section 121 of the UAE Law on Crimes and Penalties, and the same applies to Section 293 (1) (e) (i-iii) of the Malaysian Criminal Procedure Code.

Fourthly, the age of the convicted person should not be less than the minimum age allowed for employment in the country. In this regard, we find that the UAE Penal Code does not address this condition in the provisions related to community service (121-125). Additionally, the UAE Juveniles and Homeless Law No. (9) of 1976 also did not consider community service as an alternative or a measure of punishment. However, according to Articles 21 and 22 of the UAE Federal Labor Law of 1980, community service may be imposed as an alternative punishment on juveniles aged (15-18), but within the conditions and obligations specified by the law, which were previously mentioned in the discussion related to the personal scope of applying this punishment.

However, the Malaysian legal position was clearer in identifying the beneficiaries of the community service system, who are persons aged above 18 and below 21 years old (Section 2 (1) of the Malaysian CPC). The Malaysian law adopts another system that is akin to community service order, and it is applied to adults in lieu of a custodial sentence or imprisonment if the convicted person is unable to pay a fine (section 6 (2) of the Malaysian Offenders Compulsory Attendance Act of 1954).

But what is the legal position of the UAE and Malaysian laws regarding subjecting minors to community service? According to Article 20 of the UAE Federal Labor Law No. 8 of 1980, it is not permissible to employ minors of either gender before they complete the age of 15 years. This means that minors can be employed after the age of 15, but only after the employer has taken a set of procedures, including obtaining documents related to the birth certificate of the minor and their health eligibility certificate, as well as the consent of their parents. In all cases, minors are not allowed to work in hazardous, strenuous, or night work, and they are limited to working six hours at most per day (Sections 21 and 23 of the UAE Federal Labor Law of 1980). However, the community service system is absent from the provisions of the Federal UAE Law No. (9) of 1976 on Juvenile Delinquents and Homeless, which proves that this system is not applicable to juveniles under the age of 15. The same applies to individuals aged 15 to 18 because they are fully subject to the provisions, rules, and penalties of the Juvenile Delinquents and Homeless Law, not the Federal Law on Crimes and Penalties.

In comparison, according to Section 82 of the Malaysian Child Act No. (611) of 2001, a child is anyone under the age of eighteen. In contrast to the UAE law on juveniles and homeless, there is no provision for community service as a penalty for children under the age of eighteen in the Malaysian Child Act.



It is also noted that the Malaysian Criminal Procedure Code No. (1274) of 2006 was clear in defining the category subject to community service, which is youth aged 18-26 (Section 2 (1)). This indicates that the criminal policy in both countries is inclined towards not applying the community service system to the juvenile category. However, upon reading Sections 91 and 83 of the Malaysian Child Act, as well as Section 23 of the UAE law on juveniles and homeless, we can infer that there is nothing preventing the court from imposing community service as a penalty on juveniles once they reach the age of eighteen, even if they have not completed their sentence.

However, the provisions of Sections (11) and (14) of the UAE new Juvenile Delinquency Act No. 6 of 2022 permits the application of the community service system as a measure in juvenile cases, not as an alternative or original punishment, which requires amendment at the earliest.


3.2: Conditions Related to Committed Crimes & Its Penalties

Firstly, community service is limited to misdemeanors and violations, not felonies. The UAE law has specified a duration for imprisonment that can be replaced by a community service sentence. In the UAE legislation, misdemeanor crimes are punishable by imprisonment or fines, and the prison term can range from one month to three years. The imprisonment sentence for misdemeanors is executed by placing the convicted person in one of the closed punitive facilities. Community service is also applied to perpetrators of violations that are punishable by fines. Section 121 of the UAE law on crimes and penalties has clarified these conditions by stating that "the community service sentence shall only be imposed for misdemeanors as a substitute for a prison sentence not exceeding six months or a fine, and the duration of community service shall not exceed three months."

It is noted that the term "misdemeanors" in Section (121) of the law has not an absolute description, but rather limited only to misdemeanors punishable by a period not exceeding six months. This means that this social service cannot be applied to all misdemeanors, but only to a specific type, which is punishable by imprisonment for a period not exceeding six months. However, is this really the federal legislator's purpose in adopting this system as an alternative punishment for short-term imprisonment? Is the intended meaning of the phrase "misdemeanors whose punishment does not exceed six months" the actual punishment for the act or the punishment contained in the court's ruling? Therefore, it is necessary to clarify that in our opinion, the closest meaning of this provision is the applicability of the social service to all misdemeanors, which its prescribed penalties in the judicial ruling are not exceeding six months. This means that if the punishment for the misdemeanor ranges from (6 months to 3 years) and the verdict is for the minimum punishment, i.e., imprisonment for six months, then this system can be applied in this case.

However, why does Section (121) of the UAE law on crimes and penalties specify the applicability of the community service to punishments decided by the court for six months or less? In this case, it is noted that if the court sentences the defendant to imprisonment for more than six months, it means that the person poses a criminal risk, and therefore cannot be rehabilitated through the application of the community service. Instead, the convict person needs to be imprisoned for the purpose of applying rehabilitation programs to them in order to rehabilitate and reintegrate them into society. In comparison, according to Malaysian law, the court may issue a community service order for youth aged 18 to 21 who commit offenses punishable by custodial sentences or fines, as affirmed by Sections 2 and 293 of the Malaysian Criminal Procedure Code. Offenses punishable by custodial sentences include both serious and minor crimes, such as driving without a license, vandalism of public property, and possession of tools for housebreaking (Sections 21 and 26 of the Malaysian Road Transport Act of 1987, Sections 15 and 28 of the Malaysian Minor Offences Act 1955). However, there is a difference in approach in the Malaysian legislation in determining the types of offenses eligible for community service orders, as it takes into account the simplicity of the crime and judicial reality. The community service system applies to minor offenses and violations, but the maximum penalty for minor offenses has not been specified for the purposes of this system. However, the Malaysian legislature has not excluded serious and severe offenses from the scope of this system, while the UAE legislation excludes certain felony offenses from its application.

Secondly, the execution of community service punishment within a specific period of time according to the law varies among comparative legislations. For example, the French law specifies it for (18)



months, while the Jordanian law defines it as a full year. At the same time, we find that the French law determines the number of working hours that the sentenced person must complete daily or weekly. In other legal environments, the matter is left to the judicial authority to determine the duration, mechanism, and daily or weekly hours of work.

In the UAE legislation, the judge cannot determine the duration of the community service punishment, as it is already specified by law in Section 121 of the federal law on crimes and penalties, which stipulates that "the duration of community service shall not exceed (3) three months". The judge must determine in the sentence the prescribed duration of work. If the judgment does not specify the duration of the work or if the duration of the execution exceeds three months, it can be appealed and annulled. In Malaysian legislation, the duration of community service is also legally defined as (3) three months. This is confirmed by Section 5 (1) (a,b) (iii) of the Malaysian Restrictive Residence Act, which deals with the punishment of compulsory work, a system that is consistent with community service punishment. This Section states that compulsory work should not exceed three months. Section 293 (1) (e) (i-iii) of the Malaysian Criminal Procedure Code and Section 5 (1) (a,b) of the 1954 Malaysian Restrictive Residence Act also stipulate that the convicted person must attend at the center on a daily basis to perform the compulsory work for a period not exceeding 3 months and for a time not exceeding 4 hours daily.

Accordingly, it is noted that the consistency of the prescribed duration of community service, which is not more than 3 months according to both Section 121 of the UAE law on crimes and penalties and Section 5 of the Malaysian Restrictive Residence Act. In addition to the legislative alignment, both the UAE and Malaysian laws designate the competent authority to issue the community service order, which in both cases is the court that has discretionary powers to grant such an order based on the criminal dangerousness of the crime and the offender, the characteristics of the offender, and the circumstances of his failure to pay the fine amount. In contrast to Malaysian legislation, we find that the legal provisions for community service (Sections 121-125) of the UAE Penal Code do not specify the criteria for distributing work hours, but leave it to the judge's discretion to allocate them over a period of three months, taking into account the convicted person's circumstances, qualifications, age, health condition, and the conditions of the institution in which the community service punishment is executed. In Malaysia, Section 293(1) (e) (i) of the Criminal Procedure Act stipulates that the number of work hours during the execution of community service should not exceed 240 hours and should be distributed on a daily or weekly basis according to the court's judgment.


4. Community Service Implementation Procedures

One of the key features of community service in the legislation of the United Arab Emirates and Malaysia is that it is a legal and judicial penalty that can only be issued by the subject judge who rules on the criminal case. In the UAE legislation, a copy of the judgment containing the community service penalty is sent to the public prosecutor's office, where section 122 of the Federal law on crimes and penalties states that community service penalties are executed under the "supervision of the public prosecutor's office.

In the Malaysian legislation, community service penalties are not executed through the public prosecutor's office, but rather, according to section 293(1)(e)(iii) of the Criminal Procedure Code, it is executed under the supervision of "the Minister charged with the responsibility for women, family and community." In any case, whether in the UAE or Malaysian legislation, the judicial verdict for community service must specify the number of hours of work that the convicted person must perform, the name and address of the institution where the community service penalty will be executed, and the type and style of work that the convicted person will perform, taking into account their health, age, scientific abilities, mental and physical capabilities, as demonstrated in the case study file of the convicted person. The implementation procedures for community service penalties in the UAE and Malaysian laws are graduated in the following stages:

4.1: Stage of Creating the Convict Person File

According to UAE legislation, the court sends the decision to the Public Prosecution for the purpose of starting the implementation, and then the decision is sent to the relevant minister according to Malaysian criminal procedural law (Al-Tawji & Othmani, 2020). The concerned authorities in both



countries implement this punishment by summoning the person sentenced, verifying his identity, social status, and health conditions, and then presenting him to a specialized doctor. Although section 293 of Malaysian law does not mention the need for a medical examination for those sentenced to community service, the general provisions of the Criminal Procedure Act can be applied to the procedures for implementing the community service punishment. Therefore, the provisions stipulated in section 290 of the same law can be utilized, even if it deals with the issue of medical examination of those sentenced to corporal punishment. It is better if the responsibility of reporting the health condition of the person sentenced to alternative punishment is based on a medical certificate issued by the institution's doctor where the community service will be implemented. Perhaps this justifies the silence of the UAE and Malaysian legislations in addressing this issue within the legal rules related to community service.

In the UAE legal environment, the tasks that a person sentenced to community service may be assigned include memorizing or reciting the Quran, caring for children, disabled or sick people, cleaning roads, public places, beaches, natural reserves, and public libraries. Additionally, a person sentenced may be assigned tasks such as gardening and caring for public gardens, assisting civil defense personnel, loading and unloading containers in ports, filling fuel, or any other work that achieves public benefit.

In Malaysia, those convicted of minor crimes are given the opportunity to perform community service that does not affect their work or employment. This involves working with local government and council workers to clean up the outskirts of cities, or working in hospitals and public health centers to assist patients and clean public facilities, places of worship, elderly homes and orphanages. They may also give educational, awareness, and professional lectures, attend lectures and training courses (Section 91 of the Malaysian Child Act 2001).

4.2: Stage of Community Service Execution

Under UAE legislation, the Public Prosecution supervises the implementation of community service penalties as stipulated in section 121 of the Federal Law on Crimes and Penalties of 2021. However, the amended Federal Criminal Procedure Law of 2022 introduced the system of an Execution Judge whose duties include implementing all original or alternative penalties. This requires amending section 121 of the federal law to transfer the authority of implementing community service penalties from the Public Prosecution to the Execution Judge, while still being under its supervision.


According to section 123 of the federal law on crimes and penalties, the entity executing the community service is obligated to submit a detailed report to the Public Prosecution regarding the convicted individual's performance, behavior, and commitment to the assigned service. Additionally, section 124 of the same law stipulates that if the convicted individual violates the requirements of community service, the court, upon the request of the Public Prosecution, may decide to apply a similar period of imprisonment or complete the remaining service. The Public Prosecution may also postpone the implementation of the community service if deemed necessary, provided that adequate measures are taken to ensure its implementation.

4.3: Stage of Ending of the Community Service Penalty

The community service punishment is a testing period for the convicted persons. If they comply with the imposed service and demonstrate disciplined behavior, in addition to receiving a positive report from the organization they worked for, the punishment will be considered fulfilled and the court cannot enforce a prison sentence. However, if the convicted individual fails to comply with the conditions of the community service or demonstrates negative behavior, the community service punishment will be cancelled, and they will be imprisoned for a similar duration to the community service or the remaining duration of it.

CONCLUSION

Community service punishment is a novel approach to alternative penalties for short-term imprisonment, in response to evolving theories of criminology and efforts to humanize the criminal justice system. The Anglo-Saxon and Latino legal systems have adopted this punishment, and the UAE and Malaysian legislation has followed suit in their various penal legislation. It is commonly



acknowledged that short-term prison sentences may have adverse effects on the convicted individual's social and family life. Although UAE and Malaysian laws stipulate penalties for deprivation of liberty and fines, short-term imprisonment is typically reserved for minor offenses. Nevertheless, in practice, these penalties have both positive and negative outcomes, with the latter often outweighing the former. While we do not advocate abolishing these penalties altogether, we suggest reducing their use and replacing them with alternative penalties such as community service. This will help to mitigate the harm inflicted on the convicted person, their family, and their relationship with society. Additionally, it will alleviate public overcrowding in prisons and penal institutions. After studying the community service system in UAE and Malaysian legislation, we have drawn several findings and recommendations.

Findings:

- Unlike other comparative legislations, the UAE and Malaysian legal systems have embraced community service as a substitute for short-term imprisonment and fines. However, neither legislation includes provisions indicating that community service can be utilized to suspend the execution of the penalty.
- The main difference between the legal systems of the UAE and Malaysia is the criteria for applying community service, including the nature of the crime, the type of punishment, and the characteristics of the individual assigned to community service.
- The UAE and Malaysian legal systems differ in assigning community service work. UAE law recognizes professional skills and designates specific occupations, while Malaysia does not specify work types.
- Under the Malaysian law, convicted individuals are not paid for their community service work, but the financial benefit generated from their work is paid to the prison or local authority. Conversely, the UAE legislation does not mention any financial benefits for community service work.

Recommendations:

The study's findings suggest the following recommendations:

1. To enhance the community service approach in addressing domestic violence in Malaysia, it is recommended that amendments be made to the Malaysian Domestic Violence Act of 1994. This would involve expanding the scope of community service as a primary form of punishment, rather than simply as an alternative for deterring first-time offenders. Similarly, in the UAE, it is suggested that the Federal Law on Crimes and Penalties be amended to promote a more community-focused approach to punishment. This would involve increasing the role of community service as a means of promoting accountability and encouraging offenders to make reparations for their actions. By incorporating community service as a major aspect of the legal systems in both Malaysia and the UAE, we can foster a greater sense of civic responsibility and promote positive social outcomes. This approach can help to reduce recidivism rates and provide opportunities for offenders to contribute to the betterment of their communities, while also helping to prevent future incidents of domestic violence and other forms of criminal behavior.
2. To amend the laws in Malaysia and the UAE to ensure that community service is only applied to minor offenses. This means that serious misdemeanors and violent crimes that cause physical harm to victims should not be eligible for community service.
3. To add a legal provision to the UAE Law on Crimes and Penalties and the Malaysian Criminal Procedure Act, which makes the court's decision on community service linked to the confirmation that the offender will not return to criminality and his morals, past, age or circumstances in which the offence was committed or its trivialization, before the court rules on community service. It should examine the proportionality of the work in terms of its type, physical capacity, the proportionality of work to his age, and his social and health status. Accordingly, we propose to the UAE and Malaysian criminal legislators to adopt the provisions of article 132 (2-5) of the French Penal Code, which

restricts the judge's powers to apply the community service by ensuring the adequacy and health capacity of the convicted person.

4. To amend the provision of sections (11) and (14) of the UAE Federal Law No. 6 of 2022 regarding Juvenile Delinquents and those at Risk of Delinquency, and expanding the scope of applying community service as a primary or alternative punishment rather than a measure in cases of juvenile delinquents, for its benefit in encouraging the offenders to engage in volunteer work, rehabilitating and reforming them, and promoting their positive outlook towards society.

5. To amend Section 121 of the UAE Law on Crimes and Penalties and Section 293 (1) (e) (i-iii) of the Malaysian Code of Criminal Procedure. This amendment should be made to require judges to consider the criminal history of a convicted individual through case law. If the individual has a history of repeat offenses, community service should not be considered as a penalty unless the individual has successfully completed rehabilitation. In such cases, the judge may choose to impose community service as a punishment. Instead, the penalty should be increased to ensure that repeat offenders face appropriate consequences for their actions.

6. To amend Section 121 of the UAE Law on Crimes and Penalties, as well as Section 293 (1) (e) (i-iii) of the Malaysian Criminal Procedure Code for making community service voluntary and consensual, which means it cannot be imposed by the court without the consent of the convicted person to apply it. The provisions of these sections indicate that the penalty of community service, in its current form, is mandatory, which contradicts with its purpose.

REFERENCES

- [1] Abdul Whahab, Norazla (2014). *Legal Issues in implementing the Community Service Orders for Child Offenders in Malaysia*, *Journal of Asian Social Science*, 10 (4), 93-101.
- [2] Abu Hijleh, Rifaat Safi Ali. *Community Penalties as one of the Alternative Penalties in Jordanian Legislation*, Master's thesis in Public Law. (Amman, Jordan: Faculty of Law, Middle East University, 2019) 37, 1-109.
- [3] Ali, Mahfouz Ali. *Penal Alternatives to Imprisonment and Rehabilitation of Convicts*. (Al-Wafa'a Legal Library: Alexandria, 2016) 98-99.
- [4] Al-Muhairi, Maryam Sultan Rashid Bin Qaba and Noor, Muhammad Suleiman (2019) *Reinforcement for Community Service in Islamic Jurisprudence and United Arab Emirates Law: A Comparative Study*, *University of Sharjah Journal of Sharia Sciences and Legal Studies*, 18 (1), 442-473.
- [5] Al-Shayyab, Tayel and Hassan, Salama Rashid (2019), *The Penalty for Service "Work for the Public Benefit" in The UAE and Jordanian legislation: Reality and Hope*, *Journal of Sharia Sciences and Law Studies*, 46 (4), 403, 401-417, 407-408.
- [6] Al-Tawji, Mohamed and Othmani, Abdelkader. *The Penalty for Working for the Public Benefit in Algerian Legislation*, *Journal of Law and Development*, (Taheri Mohamed Bashar University, Algeria, 2020) 3, 58-59.
- [7] Ashoyer, Ibrahim. (2019) *Working for The Public Benefit as An Alternative Penalty in Light of The Draft Criminal Law*, *Journal of Law and Business*, (51), 134-147.
- [8] Moghaddam, Mabrouk. *Provisions for the Application of the Work Penalty for the Public Benefit considering Algerian Legislation*, *Journal of Human Sciences*, (University of Mentouri Constantine, Algeria, 2011) 36, 2.
- [9] Omar, Khoury. (2009). *Punitive policies in Algerian law: a comparative study*, (Dar Al-Kitab Al-Hadith, Algeria, 2009) 375.
- [10] Otani, Safaa (2009) *Work for the Public Benefit in Contemporary Punitive Policy*, *Damascus University Journal of Economic and Legal Sciences*, 25 (2) 425-467.
- [11] Othman, Asmah. *The Community Service Order (CSO) in Malaysia: An Exploration of the Perceptions and Experiences of the Youthful Offenders and Supervisors*. Ph. D Thesis. (Salford, UK: School of Humanities, Languages and Social Sciences, University of Salford, 2013) 242. 60, 1-283.
- [12] Rahim, Anita Abdul., Zainudin, Tengku, Noor Azira Tengku., and Roslan, Mohamad Afiq Taqiudin (2013), *The Extent of the Application of Community Service Order as an Alternative Punishment in Malaysia*, *Mediterranean Journal of Social Sciences*, 4 (10), 154-159.
- [13] Shehab, Bassem. (2013) *The Penalty of Working for the Public Benefit in Algerian Legislation*, *United Arab Emirates University Journal of Sharia and Law*, (56), 1-70.