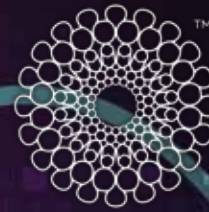


# COURTS ECHO

Quarterly, Legal, Judicial



EXPO  
2020  
DUBAI  
UAE

Welcome to the World at  
Expo Dubai  
United Arab Emirates

## Swift Adjudication

in Cases and Disputes through  
Indirect Legal Proceedings

## The Impact of Coronavirus

on Contractual  
Obligations in UAE Law

A Review of Law  
Applicable to  
**Stateless  
or Multi-national**  
in Matters of Marriage

Who Are the Parties Entitled to  
**Request Interpretation  
of a Constitutional Text**  
Before the Federal Supreme Court?

Will  
**Legal Robots**  
Replace Judges or Lawyers?





**Dubai Courts extends**  
the most heartfelt and profound  
congratulations on the occasion  
of the 16th Anniversary of

His Highness Sheikh

**Mohammed Bin Rashid Al Maktoum**

UAE Vice President, Prime Minister and Ruler of Dubai

**assuming the reins of  
government in the Emirate of Dubai**

during which the Emirate of Dubai and the UAE has been placed in a unique position on the world map, with unimaginable civilizational achievements that supported the country's process towards development to create a bright future for forthcoming generations.



## Life Without Law is Not Worth Living



**H.E. Tareh Eid Al Mansouri**  
General Director, Dubai Courts

This is the third edition of the Magazine of Sada AL-Mahakim (Courts' Echo) that is full of all that is new. Praise be to God, this edition is rich in legal knowledge and visions that soar in the vista of the law and open before the reader new horizons that emphasize that the law is life, as the life without a law is not worthy of living. In this edition of Court Echo Magazine, we are proud of being able to attract pioneering writers in the fields of law, with their expertise based on the vast experience that indicates abundant knowledge of great professors whose hands are still permeating the legal work, and brilliant minds that are still working hard, and in innovation and excellence in law and its fields that illustrate that this is a wonderful package of articles by professors who spent their lives and ideas in a deep endeavor and elegant human thought. Those articles are a school of elegant legal thought in which the reader is yet to decide where to start and where to end. Therefore, our precious Reader of the Magazine can have the interesting choice to read either about "Moving the Request for a Constitutional Interpretation Before the Federal Supreme Court" by (Dr. Tareq Abu Al-Wafa), or the "Amendments to the UAE Civil Transactions Law and their Impact on Determining the Applicable Law to the Stateless or Multi-national in Matters of Marriage" by (Dr. Khaled Raafat Ahmed), or "Coronavirus and its Impact on Contractual Obligations in UAE Law" by (Judge Saad Zewail), or "Defining the Procedural System on Execution Orders on Petitions before the Personal Status Court" for Chancellor Mohammed Huwidi, and it is a matter of pride that among the writers of this edition is the Emirati Judge Dr. Hamda Al-Suwaidi, in her brilliant research on "Indirect Legal Procedures to Ensure Speedy Implementation of Criminal Procedures", and this is a testament not only to the distinguished role of Emirati Women in the fields of work, but also to the excellence of Emirati Women and their entry into the field of advanced legal scientific research that the United Arab Emirates has boasted of before other countries of the world, as bright signs of the UAE's empowerment of women and the government and the people's concerted efforts towards this objective, and what is also worthy of note, with contemplation and anticipation for the future in this edition, is the article "Legal Robots" by Dr. Amr Taha Badawi, and we may borrow from that article the statement of its writer, heralding an advanced era in legal work, by saying, while looking forward to the future, that, quote: "Smart robots will have a significant and effective impact in the field of the legal profession, and in the work of the judiciary, as the reality points out to the resort of many major law firms and offices to them to provide their non-material legal services at a lower cost, where they can perform some of the tasks of lawyers and give legal advice, explanations and answers", unquote.

### To Begin with

This scientific legal advance of an issue that is highly anticipated is something that is eagerly awaited by the legal community, since it will be a breakthrough in the field of speeding up legal proceedings and achieving its provisions very quickly and accurately, achieving what we hope is a rapid, accurate and successful legal work that will be in tune with the pace of global modernity; which must not only be kept up the pace with, but also achieving progress in its first ranks, if we are not its outright leaders.

Thus is the Court Echo Magazine; which will remain wide open to everything that is new and that is solid. Great scholars of law, dive deep into a sea of knowledge for the precious pearls of knowledge and wisdom. This makes the magazine as we all desire to be; a beacon of pioneering and legal knowledge and science.





Issue 3 - December - 2021

A quarterly journal specialising in the publication of the courts management-related judicial, legal and administrative topics, with the objective of enhancing the exchange of knowledge in the judicial and court administration domain, and issued for the purposes of:



**Vision:**  
We seek to be the first choice of the elite.

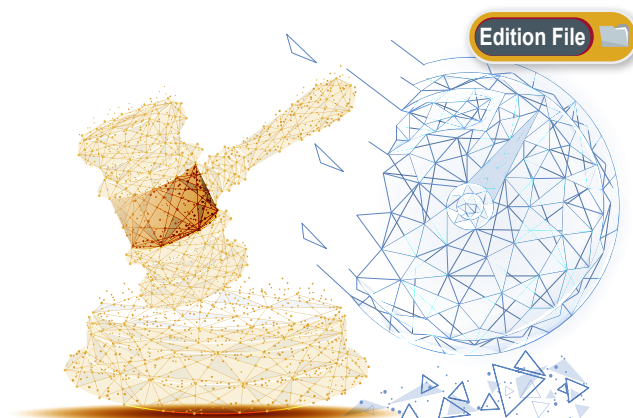
- Objectives:**
- Enhancing the dissemination of knowledge in the judicial and court administration field;
  - Attracting specialists in judicial, legal and administrative matters that are related to the management and services of the courts;
  - Following up and commenting on the trends and judicial rulings, both locally and internationally;
  - Cementing the relationship between theory and jurisprudence and the practical reality and judicial application.

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The articles, studies and opinions are a reflection of the point of views of their authors and do not necessarily express the opinion of the Magazine and its administrators.



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## Mohammed Bin Rashid

**Issues a Decree on the abolition of the “Emirates Maritime Arbitration Centre” (EMAC) and the “Dubai International Financial Center (DIFC)’s Arbitration Institution” and the Corporate of their Jurisdictions into the “Dubai International Arbitration Centre” (DIAC) And a Law on the Regulation of Works of Reconciliation in the Emirate of Dubai**

### **The Dubai International Arbitration Centre (DIAC):**

His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE “May God bless him with His grace”, in his capacity as Ruler of the Emirate of Dubai, issued Decree No. (34) of (2021); which abolished both the “Emirates Maritime Arbitration Centre” (EMAC) and the “Dubai International Financial Center” (DIFC)’s Arbitration institution and merged their competencies and powers into the “Dubai International Arbitration Centre” (DIAC), established by Decree No. (10) of (2004), a non-governmental, non-profit center with legal personality and financial and administrative independence.

The decree, which comes in line with the objectives of raising the efficiency of various vital sectors in the Emirate of Dubai and enhancing the elements for the environment that supports the community and its business activities in the Emirate, provides for the transfer of ownership of real estate, movables, assets and funds belonging to the cancelled arbitration centers, as well as the employees approved for transfer, the financial allocations, the lists of arbitrators, conciliation mediators and experts registered in the cancelled arbitration centers, and the membership of the persons affiliated to them, provided that their registration and membership continue with the same conditions, procedures and fees approved by those centers until the expiry of such registration or membership, and that the conditions, procedures and fees approved by the Board of the Dubai International Arbitration Centre (DIAC), will be applied upon renewing such registration or membership, and that the rights and obligations of those cancelled centers will

be replaced with new rights and new obligations as a result of the enacted merger.

In accordance with the decree, all agreements concluded on the date of going into force of this decree by resorting to arbitration in the cancelled arbitration centers, are valid and effective and the “Dubai International Arbitration Center” (DIAC) shall replace these centers in the consideration and adjudication of disputes arising from such agreements, unless otherwise agreed upon by the parties, and it is also stipulated that the arbitral tribunals and committees formed on the effective date of this decree with the abolished arbitration centers and the “Dubai International Arbitration Center” (DIAC) shall continue to consider and decide all arbitration cases before them without interruption and in accordance with the rules and procedures approved by them in this regard, unless the arbitration parties agree otherwise, provided that the “Dubai International Arbitration Center” and Its Governing Body take on the responsibility of overseeing such cases.

The “Dubai Courts” and the “Dubai International Financial Center” (DIFC) Courts shall continue to hear claims, requests and appeals relating to any ruling or arbitration procedure issued by the arbitral tribunals of the “Dubai International Arbitration Centre” and the cancelled arbitration centers, in full legal accordance with the applicable procedures and standards. The basic statute details the objectives that the “Dubai International Arbitration Centre” (DIAC) will strive to achieve; the most important of which is to establish Dubai as a reliable global center for the resolution of disputes by alternative means rather than by judicial means, to strengthen the status of the center as one of the best options for efficient and effective dispute resolution by following international best practices, as well as encouraging the resort to alternative means of settling disputes, in a manner that serves the financial and business community in the Emirate. Decree No. (34) of (2021) replaces Decree No. (10) of (2004) establishing the “Dubai International Arbitration Centre” (DIAC), and cancels any provision in any other legislation to the extent that it conflicts with the provisions of this decree.

**Regulation of Works of Reconciliation in the Emirate of Dubai:** In his capacity as Ruler of the Emirate of Dubai, His Highness

Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE, issued Law No. (18) of (2021) on the Regulation of Works of Reconciliation in the Emirate of Dubai, with the aim of promoting a culture of friendly dispute settlement through conciliation, encouraging the adoption of alternative ways of resolving disputes arising between parties to the dispute, and enhancing the continuity of contractual relations and commercial and civil projects between individuals and companies by settling disputes arising between them in friendly and consensual ways, in addition to speeding up the adjudication of disputes and streamlining their procedures, and providing a confidential working environment. The provisions of the Act apply to the Centre for Amicable Settlement of Disputes (The Centre), established by Law No. (16) of (2009), and to anyone who undertakes any activity relating to works of reconciliation in civil and commercial matters carried out through the party undertaking the reconciliation work.

In accordance with the law, the center is competent to consider and decide disputes; which are determined by a decision issued by the President of the Dubai Courts, whatever their nature or value, disputes which the parties agree to be looked into by the center, as well as cases which the court decides, during its consideration and in any form they may be in, to refer to the Centre on the basis of the agreement of the litigants.

The Act established the Working Procedures of the Centre for the Amicable Settlement of Disputes and the mechanisms for assigning its powers, in addition to the functions of the Head of the Courts of First Instance, who, in accordance with the law, supervises the center, assigns one or more judges from the courts of first instance to supervise works of reconciliation, adopts agreements of reconciliation and adjudicates disputes referred to him/her in accordance with the provisions of the act. The promulgated Law replaces Act No. (16) of (2009) on the establishment of the Centre for the Amicable Settlement of Disputes, and any provision in any other legislation shall be repealed to the extent that it contradicts the provisions of Act No. (18) of (2021), and the decisions issued in implementation of Act No. (16) of (2009) shall continue to be enforced to the extent that they do not contradict the provisions of the new law, until the decisions that will replace them are issued.





## Hamdan Bin Mohammed

**Inaugurates the GITEX GLOBAL (2021)  
with the Participation of over (3500) Exhibitors from (140) Countries**

His Highness Sheikh Hamdan Bin Mohammed Bin Rashid Al-Maktoum, Crown Prince of Dubai and Chairman of the Executive Council of the Emirate of Dubai, inaugurated the GITEX Global and the World of Artificial Intelligence, the world's most influential technology event of (2021), in its (41st) edition at the Dubai World Trade Centre (DWTC).

H. H. stressed the importance of the timing of the big technology event at a time when Dubai's exhibition and conference sector continues to strongly grow in the wake of the Covid-19 Pandemic and its still unfolding repercussions.

His Highness was quoted as saying, quote: "[d]ubai reaffirms its commitment to supporting the vital sectors responsible for shaping the future, most notably the technology sector. We continue to boost confidence levels, accelerate growth and stimulate innovation as the world prepares to take off strongly, leaving behind the consequences of a major crisis affecting its various sectors.", unquote.

He went on to say that, quote: "[w]e continue to work with the vision of His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE and Ruler

of Dubai, to strengthen Dubai's partnership with leading global technology institutions in the field of technology as well as small and medium-sized enterprises and entrepreneurs to discover more areas of co-operation and partnership to provide effective solutions that address current and future global challenges, and elevate humanity's quality of life and ensure it a better tomorrow", unquote.

His Highness and his companions were briefed on the highlights of the event; which will include for the first time six major events held in one location, and they are: (GITEX Global, A.I World, GITEX Future Stars, Future Block Chain Summit, Fintech Surge and Marketing Conference (Marketing MENA)), with the participation of more than (3500) Exhibitors from more than (140) Countries.

GITEX Global and A.I World (2021) are committed to implementing stringent Covid-19 prevention standards that have enabled Dubai World Trade Centre (DWTC) to provide the highest level of security for hosting live commercial events and organizing global events, while maintaining the highest standards of Health and safety.



## Maktoum Bin Mohammed

**Directs the Beginning of the Formation of two Chambers within  
the Commercial Court to Expedite the Adjudication of Securities Disputes**

As part of the unrelenting efforts aimed at continuing to support the legislative framework and providing it with the factors of strength that will enable it to meet the requirements of the new phase, His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al-Maktoum, Deputy Ruler of Dubai, Deputy Prime Minister and Minister of Finance, has directed the formation of the Dubai Financial Markets Law Enforcement Committee, chaired by Dr. Abdullah Al-Ghafferi, where the Committee is competent to work on developing financial procedures, controlling financial markets, speeding up the pace of businesses, monitoring violations and enforcing laws. Also His Highness directed to start forming two Chambers within the Commercial Court to expedite the adjudication of disputes, namely the Chambers of Partial Securities Disputes and Total Securities Disputes to begin their work in January of (2022), and both departments are competent to adjudicate lawsuits about stocks, bonds or other securities, according to the financial value of each lawsuit.

His Highness also announced the listing of (10) governmental and semi-governmental companies in the Dubai Financial Market, in a move that will support the financial sector in the Emirate in an unprecedented manner and stimulate the pace of growth in

it to achieve more accomplishments and successes that cement Dubai's leading position as one of the most important financial and business markets in the world, and that was during His Highness's presiding over the first meeting of the Committee for the Development of Financial Markets and Stock Exchanges in Dubai, where the formation of the Law Enforcement Committee for the Financial Markets in Dubai and Special Courts for Financial Markets was announced.

His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al-Maktoum emphasized that the vision of His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, is to double the value of the Dubai Financial Markets and their Stock Exchanges to (3) Trillion Emirati Dirhams. His Highness added, quote: "[w]e will work on developing integrated and comprehensive plans to develop the financial markets and stock exchanges in the Emirate of Dubai to consolidate Dubai as the capital of money and business. The financial markets in Dubai are an example of transparency and law enforcement, and the embodiment of the directives of Mohammed Bin Rashid that no one is above the law", unquote.



## Maktoum Bin Mohammed

### Issues a Decision Appointing Dr. Ibtisam Al-Badwawi, an Appeal Judge in Dubai Courts, to Perform the Duties of Director General of the Dubai Judicial Institute

His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al-Maktoum, Deputy Ruler of Dubai and Chairman of the Judicial Council, issued Decision No. (18) of (2021), appointing Judge Dr. Ibtisam Ali Rashid Saif Al-Badawi, an Appellate Judge in the Courts of Dubai, to serve as Director General of the Dubai Judicial Institute, in addition to her original duties in the Courts of Dubai.

Dr. Ibtisam Al-Badawi crowns a distinguished academic journey and a distinguished career in the service of many governmental entities in the Emirate of Dubai, having earned a Bachelor's Degree in Sharia and law from the UAE University.

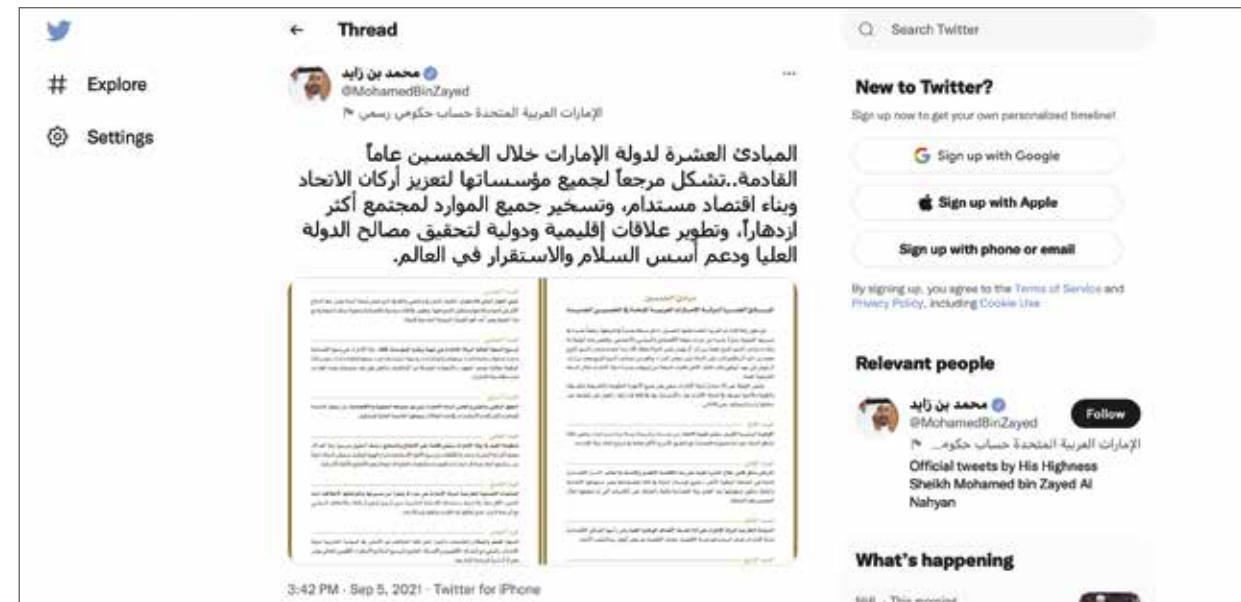
In (2012), she received a Master's Degree in Private Law from the Dubai Police Academy with Excellence Grade, and a PhD in Private Law from the same Academy in (2019). From (2006) to (2009), Al-Badawi was a Legal Researcher at the Department of Legal Affairs of the Ministry of Education, in charge of investigative procedures, decisions, administrative disciplinary measures and representing the Ministry in disputes brought by it or against it.

Dr. Ibtisam was also selected as a Member of several Judicial Committees, most notably the Judicial Committee Dealing with the Liquidation of Cancelled Projects, the

Judicial Committee Dealing with the Sale of Heirs of Residential Properties, and the Judicial Committee Dealing with Exemptions and Postponements. She has also been a Member of many Administrative Committees, including Honorary President of the Women's Council of Dubai Courts since (2015) to date, Director of the Editorial Board of Sada AL-Mahakim Magazine, Member of the Legislative Study and Review Committee during (2017) and (2018), Member of the Development and Intellectual Property Committee of Dubai Courts since (2019) to date, and a Member of the Smart Transformation Team for Dubai Courts to prepare the Smart Case File.

In addition, Dr. Ibtisam was tasked with working with the Government Accelerators Group to amend the articles of the Civil Procedure Code and the regulations of the same law.

Dr. Ibtisam has many scientific publications and contributions, including the book "Consumer Civil Protection in Accordance with the Civil Transactions Law and the Consumer Protection Law No. (24) of (2006) and its Amendments - A Comparative Study". Another book entitled "Provisions of Compulsory Civil Liability Insurance - A Comparative study" was also authored to her name.



## Taresh Eid Al Mansouri

### Director General of Dubai Courts Makes a Statement on the Occasion of the Announcement of the Ten-Principle Document on the Next Fifty Years

His Excellency Mr. Tarish Al-Mansouri, Director General of Dubai Courts stated that, quote: "[t]he declaration of His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister and Ruler of Dubai of the ten principles of the United Arab Emirates for the new next fifty years, affirms the keenness of His Highness to make the UAE an exceptional country among all countries of the world, and the ten principles raise the ceiling of expectations for our country and make it move at a steady pace towards the next stage, enlightened by the beneficence of our wise leadership", unquote. Al-Mansouri added that, quote: "[w]e in Dubai Courts affirm our commitment to the ten principles set by His Highness; which reflect the interest of our wise government in laying the foundations that ensure directing the march of success and excellence to the right path", unquote, stressing that Dubai Courts always put the vision of the wise leadership as an approach in achieving its strategic objectives. He also added that, quote: "[w]e, at the Courts of Dubai, renew the covenant, to continue to achieve the lofty goals in strengthening and maintaining the security of the country, and to contribute to strengthening the position of the UAE as an oasis of security and safety and the most secure

and stable country in the world, and the application of the law before anything else, without differentiation between a resident and a citizen, or gender and color, or religion and another. Applying the law is the basis of our work, providing innovative services to facilitate the customer, and striving to provide the best development and service programs while maintaining the rule of law are considered one of our most important goals, and we will continue to work at a steady pace, empowered by the principles of our leader and mentor, to achieve safety and security, comfort and happiness, for all citizens and residents of the homeland", unquote. Al-Mansouri concluded by saying that, quote: "[t]oday we continue to achieve all means for the convenience of the client, while obtaining his/her right, and not delaying justice, and we have developed various programs to accelerate litigation, and the need to adhere to the provision of services according to innovative plans and programs to facilitate and speed up the completion of the procedures of the clients requesting judicial services, in addition to the constant attention to discipline and adherence to work schedules and the development of administrative capabilities and skills to reach the highest levels of quality and excellence", unquote.





## Taresh Al Mansouri

### Dubai E-Courts Services Available for “Expo 2020” Visitors

Tarsh Al-Mansoori, Director General of Dubai Courts, stressed that the Department is interested in enabling customers to benefit from its electronic legal and judicial services during “Expo 2020 Dubai”.

Al-Mansouri said that, quote: “[t]he courts have formed a team in co-operation and co-ordination with the organizers of “Expo 2020” to discuss partnership opportunities, dialogue and share ideas that support the Emirate’s unwavering efforts in making this global event a smashing success in partnership between different governmental sectors so that Dubai fulfils its promises to make “Expo 2020” the most spectacular and most distinctive since the organizing of its first edition in the middle of the (19th) century, in the British Capital London”, unquote.

He emphasized that through “Expo 2020 Dubai”, quote: “[w]e will celebrate together the achievements of the United Arab Emirates, and there is no doubt that the success of any project requires a collective effort among all institutions, and we in the Courts of Dubai always strive to achieve the vision of our sage leadership towards establishing the position of the UAE in realizing achievements that some

thought it was a difficult challenge, especially in light of the circumstances that the world went through as a result of the Covid-19 crisis, and we grew up in the school of His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, may God protect him, which does not know the impossible, unquote, and as he also said His Highness, said AL-Mansouri, quote: “[w]e promised the world that we will dazzle everyone in (2020), and today we confirm this promise and also pledge that we will fulfill our motto in connecting minds to build a better future”, unquote.

Al-Mansouri pointed also to the agreement with the Joint Team of “Expo 2020 Dubai” to enable customers to benefit from the electronic services of the Department, and to provide some services of interest to some participants and visitors of the Expo, such as Notary Services, Friendly Settlements, as well as Facilitating the Course of Minor Cases through Litigation Management.

Visitors can also turn to the nearest Service Center for support and assistance, such as a service site Center in the AL-Yalayis area, which is located near the Expo site.



## Dubai Courts

### Establish a Specialized Court to Fight Money Laundering Crimes

The Dubai Courts announced the establishment of a Specialized “Money Laundering” Court in both the Criminal Court of First Instance and the Court of Appeal, as part of the directives of His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, “May God protect him”, on the establishment of the Executive Office to Combat Money Laundering and the Financing of Terrorism, and in implementation of the general framework of the national strategy to combat money laundering crimes, where His Excellency Tarish Al Mansouri, Director General of Dubai Courts, confirmed that the establishment of a specialized money laundering court in Dubai Courts embodies the commitment and keenness of the Courts to support the trend towards specialization in judicial work to raise the level of performance and achieve leadership and excellence. His Excellency said that, quote: “[i]n addition to the UAE’s enhanced exerted efforts to combat financial crime, society, in all its segments, also has a responsibility to protect economic and social security, as reporting money-laundering crimes is both an individual and a collective duty, and it also makes a real contribution

to strengthening the capacity of the various stakeholders to deal with these crimes more effectively.”, unquote.

For his part, His Excellency Judge Dr. Abdullah Al-Shamsi, President of the Criminal Court in Dubai Courts, explained that the establishment of a specialized court for money laundering crimes strengthens the concerted efforts of the State to confront these crimes and ensure that the perpetrators are prosecuted and brought to justice.

His Excellency added, quote: “[c]ounteracting money-laundering and combating the financing of terrorism are among the priorities and concerns of the Government of the United Arab Emirates. Therefore, in Dubai Courts we strive to improve the efficiency and effectiveness of the institutional framework to counter money-laundering crimes by verifying the continuous compliance with relevant international standards, speeding up the trial, achieving the right of defense of the accused, giving him/her a short time frame in the trial process and responding to the defendant’s defense evidence that he/she presents in a legal response, in order to issue a sentence consistent with the offence committed by the accused.”, unquote.

## Indirect Legal Procedures to Ensure Speedy Implementation of Criminal Procedures



H.E. J/Dr Hamda  
Abdulla Alsuwaidi

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The administration of justice in society is the basis of its safety and stability, and is an essential source of its development, evolution and permanent progress moving forward, and this is reflected in the rapid resolution of cases and disputes, in accordance with the principle of prompt justice; which promotes tranquility in society and protects the rights and property of people. The essence of justice is that every human being obtains his/her right, thereby achieving balance in society. Justice is undoubtedly important, without which individuals feel aggrieved, which may lead them to revenge, chaos, complacency and persistent breaches of regulations and laws.

The Substantive and Procedural Criminal Legislation, including the UAE Legislation, has sought to adopt legal texts that ensure the speedy resolution of criminal proceedings, and these procedures cover all stages of the criminal proceedings.

It seems clear to the researcher of these proceedings that they are divided into two parts, some of which are direct actions to advance the speed in the criminal case, such as the criminal order and the criminal justice, and on the other side, there are indirect actions that guarantee speed within its parameters and results, and we will address those as per the following:

### A. Phase of Research, Investigation and Collection of Inferences:

It is a set of pre-trial procedures; which precede the initiation of a public right action, aimed at collecting information on a crime committed, so that the investigating authorities take a decision on the basis of which to indicate whether or not a criminal case can be initiated. It is not enough for the Court just to know that the crime has occurred for it to have a jurisdiction to identify the perpetrator and to impose the appropriate punishment on them, but also the case must be in its possession and sufficient evidence is provided to put it under the hands of the competent court; which requires speed and flexibility to move to collect this evidence without delay or slowness, as the court alone cannot find its way in proving and revealing the truth without the help and assistance of other bodies, and from this point of view, the criminal case must pass a preliminary or previous stage; which is the first stage of research, investigation or reasoning <sup>(1)</sup>.

Taking a look at the first section, entitled with "The Collection of Evidence by Judicial Investigation Officers", it is clear to all that the tendency of the UAE legislator is to urge and compel Judicial Officers to observe accuracy and speed in the performance of their duties and to place them under the supervision and monitoring of the Attorney-General (Public Prosecutor), who has the right to request the Competent Authority, at which the Judicial Officer is stationed, to bring

disciplinary proceedings against him/her, if there is a violation or shortcoming in his/her work.

The legal texts are written to urge the Judicial Officer to act immediately in many works related to the investigation and the collection of evidence, to move to the scene of the crime, to examine the material effects and to call on the assistance of the crime scene team, to collect, seize and preserve the evidence and arrest the accused in the crimes in which they were caught in the act (Red-Handed), and when there is sufficient evidence that the accused has committed a felony or misdemeanor not punishable by a fine, as well as hearing the statements of the arrested persons immediately without getting them to take the oath according to the Standard Operating Procedures (SoPs), and if the accused does not present any evidence that will lead to his/her acquittal, the Judicial Officer shall send him/her within (48) hours to the competent Public Prosecution, and get the witnesses and the experts to take the oath in case there is a fear that he/she (Judicial Officer) will not be able to hear the testimony later on, for different reasons such as the witness getting terminally ill and similar other reasons <sup>(2)</sup>.

### B. Phase of Primary Investigation:

The majority of the legislation of the Countries of the world state that the Public Prosecutor-Investigating Judge in some countries- is the only one who has the exclusive jurisdiction to file and pursue a criminal case, and it is not filed by others except in the cases specified in the law, and the prosecution may not be suspended or halted except in the circumstances set forth in the law. Nonetheless, there are restrictions on the power of the Public Prosecution to initiate the case as provided for in the law. The preliminary investigation is confidential to the public and with respect to the adversaries, the rule of thumb here is that the investigation must be conducted in their presence and the accused may be accompanied by his/her lawyer, and the Public Prosecution must enable them to attend the investigation, unless the Public Prosecutor considers otherwise in the interest of the investigation. However, the law al-

**The UAE Legislator Urged Judicial Officers to Observe Accuracy and Speed in Performing Their Duties and Make Them Under the Supervision and Monitoring of the Public Prosecutor**

**The UAE Legislator Allows the Public Prosecutor in Misdemeanor Cases to Revoke the Decision Issued by Referral Within the Period of Three Months Following its Issuance, provided that it Has Not Already Been Appealed and Has Been Dismissed.**



allows the investigator to conduct the investigation in the absence of the adversaries whenever it is necessary to reveal the truth<sup>(3)</sup>.

The UAE Legislator decided on several indirect means during the preliminary investigation phase that would bring the criminal case to a speedy conclusion, and we will enumerate them as per the following.:

**1. When the Complaint is Transmitted from the Police Station to the Public Prosecutor's Office,** where the facts and the statements of the parties concerned and the seriousness of the investigation are established, and the Public Prosecutor determines that the case is valid for adjudication, such as if the evidence is conclusive and does not warrant an investigation, provided that it is only for misdemeanors and minor offences, and the accused will be summoned to appear directly before the competent Criminal Court.

In this regard, we refer to the text of Article No. (118) of the Federal Code of Criminal Procedure; which states that, quote "[s]hould the public prosecution, in misdemeanors and petty offences, find from the evidence collected that the action is ready to be lodged, it shall summon the accused to appear immediately before the competent criminal court. If, on the contrary, it deems that there is no reason to pursue the action, it shall order that it be archived", unquote.

In order to ensure the accuracy and correctness of the work of the Public Prosecutor, the UAE Legislator authorized him/her in misdemeanor cases to rescind the decision issued by referral within the period of (3) months following its issuance, provided that it has not been already appealed and was consequently dismissed.

This may be due to the fact that the conduct of the investigation and interrogation by the Public Prosecutor has an element of disruption to the criminal case because of the fact that the accused has been found guilty, the clarity of the facts in question, the short time required for questioning, the summon of attendance and other investigative procedures and the fact that the Public Prosecutor is devoted to the most serious of crimes, namely, Felonies.

**2. The Order for the Preservation of Papers is a Decision Issued by a Member of the Public Prosecutor's Office as a charging authority not to initiate criminal proceedings before the court,** if he/she considers that there is no place to proceed after the evidence-gathering initial phase has been completed. The issuance of an order for the preservation of papers in felonies does not require a law for it to be issued by the Head of the Public Prosecution or his/her delegate, in order to achieve speed through the examination of complaints/reports transmitted from police stations and to ascertain whether the elements of the crime are not available or whether the crime is proven to be untrue and that there is sufficient evidence of the accusation or lack of attribution of the incident to the person concerned, rather than through the conduct of the investigation and what that would entail of subsequent hearings. The order not to initiate proceedings is the decision of the Public Prosecutor to terminate the preliminary investigation and to suspend the case at this stage. It is a decision not to refer the case to the competent court; which is of a judicial nature, as it is an act in the investigation and therefore it must be assumed beforehand that it was preceded by an investigation, and this is therefore something that has its own merit and strength in ending the case<sup>(4)</sup>. In other words, when the Public Prosecution conducts an investigation, it may issue an order not to initiate criminal proceedings if any of the grounds regulated by the judicial instructions are available, since the investigation is only a prelude to the trial phase and to preserve the court's time, and there is no doubt that it aims to provide the judge with the elements and facts that enable him/her to issue his/her verdict that will promptly reveal the truth, and if it becomes clear to the member of the Public Prosecution that the crime is lacking, the evidence is insufficient, or the incident is incorrect, he/she may issue an order that there is no reason to file a criminal case, and in felonies, the order is issued only by the Head of the Public Prosecution's Office or whoever takes his/her place, and it is not effective then without the approval of the Head



themselves.

**3. In the Event of the Occurrence of a Flagrant Offence (Flagrante Delicto) that Entails a Criminal Penalty,** which Results in the Speedy Disposition of the Criminal Case, this then is an affirmation of the need for speedy action to be taken in this investigative measure. If a member of the Public Prosecutor's Office does not proceed to move directly, there is no doubt that the investigation will be delayed and will result in a delay in sending the investigation file to the court, thus delaying trials and delaying the adjudication of the case, especially, when the delay in moving and examining in the case may result in the loss of evidence of the crime and the subsequent need for more time to collect such evidence, which has been lost or changed with respect to its features<sup>(5)</sup>. In practice, all Public Prosecutors in the state take shift schedules to which they are subject, to ensure the speedy transition and investigation of the accused around the clock, in order to achieve speed in the proceedings and to ensure the safety and security of the society.

Ergo, we call upon the UAE Legislature to amend

the text of Article No. (71) of the Code of Criminal Procedure by stating that the member of the Public Prosecution's Office shall Immediately move to any place to establish the status of persons, places and crime-related objects.

Through the previous amendment, we have added the word "Immediately" in a bid to emphasize the speed of the transition in effort to avoid the loss of evidence and the impediment of the speedy resolution of investigations, the detection of the perpetrator and his/her referral to the competent court.

**4. And if the Prosecutor is Unable to do so, he/she may Place the Accused in One of the Designated Places of Detention Pending Interrogation,** provided that the duration of such detention is not more than (24) hours, at which time, he/she is immediately brought before the Prosecutor's Office for immediate questioning or be ordered to be released<sup>(6)</sup>.

Moreover, the UAE Legislator has been careful to make sure that the preliminary investigation procedures should be carried out in a speedy and non-prolonged manner; which may subsequently

**The Legislator Obligated the Public Prosecution's Office Member to Immediately Move to the Crime Scene, in the Event of an Occurrence of a Flagrant Crime (Flagrante Delicto) that Warrants a Criminal Penalty**

**The UAE Legislator Does Not Allow a Member of the Prosecution to Hold the Arrested Person for More Than (24) Hours for Questioning Before Presenting him/her to the Public Prosecution or Ordering his/her Release**



**The UAE Legislator is Keen on the Need to Carry out Preliminary Investigation Procedures in a Speedy and Non-Prolonged Manner**

result in prolonging rather than expediting criminal trials. The speed of questioning of the arrested accused would enable the Prosecutor to question the accused and indicate the consequences of the crime, and this would also mean that the accused would not have the chance to arrange his/her statements in such a way as to mislead the truth, and that the Prosecutor's thorough completion of the investigation combined with speed would not prolong the trial's proceedings and would bring the case to a speedy conclusion.

**5. The Statements of a Sick Witness, Who has a Reason not to appear from where they are at, and Who Fails to Appear before the Public Prosecution to Give his/her Testimony Without an Excuse after being Legally Notified, Shall be Heard, and the member of the Public Prosecution' Office may issue an order to arrest and bring him/her in, and the member of the Public Prosecution's Office may, in the event of urgency, for the requirements of the investigation, and to reveal the truth, hear each witness separately, and he/she may confront the witnesses with each other, and if the accused fails to appear after him/her being summoned, or it is feared that he/she will escape, or he/she does not have a known place of**

residence, or if the crime is in *Flagrante Delicto* (Flagrant Crime), the member of the Public Prosecution's Office may issue an order to arrest him/her and bring him/her in, even if the incident is one in which the accused should not be detained provisionally (Pre-Trial Detention).

**6. If After the Issuance of the Referral Order, it is Found Necessary to Carry out Supplementary Investigations, which are Prepared and Conducted by the Public Prosecutor's Office and Submitted to the Court<sup>(7)</sup>.**

Undoubtedly, these procedures help to bring to a speedy conclusion the preliminary investigation, which is followed by the sending of papers to the Court, and the time of the case does not take long and the trials are conducted promptly without any delay, and the provision of numerous legal means and a mandatory force of summoning, arrest and pretrial detention by the Public Prosecutor's Office can all contribute to the revealing of the truth, without prejudice to the guarantees established by the law for the benefit of the accused.

### C. Trial Phase:

This is the stage after the preliminary investigation, since the investigation is conducted before

the Trial Court, where the evidence is presented and discussed before the court, and the investigation is public, oral and codified<sup>(8)</sup>.

Taking a look at the texts governing the trial phase of the Federal Code of Criminal Procedure, it is noted that the Criminal Legislator is eager to adopt a fast-track approach during criminal trials. It is not fair, whether for the accused, the victim, or the Public Prosecution, for the trial period to last for a long time, as the victim may feel that his/her right to punish the offender for what he/she has committed against them has faded, and society may lose confidence in the Judiciary and the Prosecution may be unable to perform the tasks and duties assigned to it in an optimal manner, due to the huge amount of cases, if accumulated<sup>(9)</sup>, and police stations that may be burdened by the large number of reports of complaints for the commission of successive crimes for the failure to achieve prompt justice, and we, as per the following, will explain the most prominent features of the element of Speed:

**1- From a realistic point of view, the criminal trial will not proceed quickly, and will be prolonged, and there will be a delay in the consideration of the case and the issuance of judgments and decisions in it, if there is inconvenience or commotion, or signs of approval and disapproval from one of those audience members present at the court, and the failure to control any of these matters, will hinder the progress of the case, and the duration of the case and the duration of the judicial session will be prolonged, and from this point of view and out of the Penal Legislator's determination to speed up the criminal trials and not delay them, we find that the Legislator has found a solution to such cases, and this solution enables the judge to control the session, and enables him/her to expel the person causing the obstruction in the course of the trial quickly, or to decide immediately to imprison him/her for no more than (24) hours, and if he/she is an employee of the court, the presiding Judge shall have the right to issue them with a disciplinary measure, and there is no doubt that the observance and application of these procedures will lead to the speedy ad-**

judication of the case and it will not be delayed, and even if there is a disturbance as long as there is legal response by the Judge, otherwise, this will adversely affect the conduct of the criminal proceedings and lead to the inability of the court to scrutinize the statements of the witness and the accused and other pleadings and arguments may be raised during the hearing; which have an important effect in reaching a speedy verdict with full conviction and high quality<sup>(10)</sup>.

**2. In order for the Criminal Court to avoid suspending the hearing of the case and postponing it until the witness is reached or he/she is present at the court to give his/her statement(s), and if the Court is convinced of the previous testimony provided in the preliminary investigation or in the minutes of the collection of evidence after swearing an oath, and if it is not possible to bring the witness before the court, and whether his/her inability to attend was due to death, illness, disability, absence outside the state, or any other reason, the Law allowed the Court to read his/her statement and consider it evidence in the case before it, and from this stand point, it becomes clear to us the Legislator's keenness to achieve speedy criminal trial and not to obstruct it for any reason whatsoever, and if it was not for this text, a lot of criminal cases would have been disrupted and the police's time would have been wasted searching for witnesses to bring them before the court. In that regard, the Federal Supreme Court ruled that, quote "[i]t is legally and practically established, pursuant to Articles Nos. (165), (166) and (239) of the Code of Criminal Procedure, that the original rule in criminal trials that they must be based on the oral investigation conducted by the court in the face of the accused and the hearing of witnesses of denial and proof, as long as humanly possible, and every deficiency in the investigation procedures must be completed", unquote, and this original rule may not be overlooked unless the parties expressly or implicitly waived it, and the text was in accordance with the aforementioned Article No. (165) that stated that the investigation begins in the session by calling the litigants and witnesses and the accused is**

**Enabling the Judge to Control the Hearing and Promptly Expelling the Person Obstructing the Quick Proceedings or Immediately Imprisoning him/her for a Period of not More Than (24) Hours**

**The Testimony of the Witness May Be Read and Considered as Evidence in the Case if he/she Cannot Be Present for Reasons of Death, Illness, Disability or Absence Outside the Country**





**Proposed Amendment "If the Accused in the Felony does not Appear on the Day of the Hearing after Being Notified Legally of the Referral Order and the Summons Paper, the Court Shall Rule in his/her Absence"**

questioned and the accusation against him/her is read to them, then he/she is asked if he/she is admitting to it, and if they confess to it, the Court may suffice to go with this confession and pass its judgment on him/her without hearing the witnesses, otherwise, the witnesses for the denial and proof of the crime must be all heard, and if the crime is punishable by death, the Court must complete the investigation, which means that in the cases of the crime punishable by death, the investigation must be completed and this can only be done by asking the accused and the accusation witnesses. Furthermore, Article No. (239) of the same Act provides that the Court of Appeal must hear the witnesses who should have been heard before the Court of First Instance and every other deficiency in the investigation procedures must be completed<sup>(11)</sup>.

**3-The failure of a legally declared witness to be present to testify before the Court in criminal proceedings is one of the reasons for delaying and prolonging the trials**, and the Legislator has therefore authorized the Criminal Judge, after hearing the statements of the Public Prosecutor's Office, to sentence the witness with a fine not exceeding (1000) Dirhams. and he/she may also order his/her arrest and bringing them in.

If the witness apologizes for health or exceptional reasons, the Legislator may authorize the Court to hear his/her testimony after notifying the Public Prosecutor's Office and other opponents, all in a

bid to achieve speedy criminal sentencing.

**4- In attempt to speed up criminal trials, the Legislature authorized the Court to try the accused in absentia whenever he/she was informed of the date of the hearing session and they did not attend and, if he/she was on bail, the Court is authorized to issue an arrest warrant against him/her.**

The UAE Legislator has differentiated between the type of crime and the extent of the possibility of issuing a sentence in absentia, as if the crime was a misdemeanor or a minor violation the Court shall issue its rule in absentia, and it has been given the option in felonies due to their seriousness and the severe punishment involved, either by issuing a sentence in absentia or postponing the case and issuing an order to summon the accused to appear before the Court. In the event that the accused has presented themselves or being arrested -In Felonies-, the sentence and the resulting punishment or measure involved will be revoked, and all of the damages that were carried out, the court may order their refund of all or part of the amounts paid out.

In our view, this text needs to be amended, since it gives the Court the authority and discretion to try or not to try the accused in absentia, so that the proposed text would read as follows:

"If the accused in the felony does not appear on the day of the hearing after being notified legally of the referral order and the summon paper, the

court shall rule in his/her absence...».

Under this amendment, the accused sentenced in absentia would be re-tried, heard and presented with the chance to present their defense, and the previous sentence would be dropped, meaning that it would be futile to summon him again to attend and delay the adjudication of the criminal case.

**5. The legally prescribed methods of Appeal are a set of procedures aimed at bringing the subject matter of the case back to the courts, or at assessing the value of the judgment itself or amending it**, and they are indeed a major guarantee of justice, since a judge may commit an error because he/she is a human being and every son/daughter of Adam is prone to making mistakes, thus, the determination to challenge the rulings deepens trust between the judges and the parties to the dispute, thereby achieving legal stability and truth-finding<sup>(12)</sup>.

The UAE Penal Legislator has limited the period of appeal against absentee sentences for misdemeanors and minor offences to only (7) days from the date of the announcement of the judgement by a report filed in the Penal Registry of the Court that issued the judgement, and the appeal shall be filed in the Penal Registry within (15) days from the date of the judgement in attendance or from the date of the judgement handed down in opposition, while the appeal by Cassation is made by the Legislator within (30) days from the

date of the judgement<sup>(13)</sup>.

The reviewer of those periods will be clear to him/her that the Legislator is adamant to shorten them and make them reasonable and expeditious, motivating both the Public Prosecution, the convicted person, the civil rights officer, the plaintiff and the insured to file a normal or extraordinary appeal in time to avoid the finality of the judgement, if they do not accept its outcome, in an effort to establish a balance between ensuring the appeal of the judgment and its examination and the expeditious adjudication of the case.

**6- The crime committed by the offender results in general harm to society and private harm to individuals**, and if the punishment is the treatment of the harm caused to society, then the way to repair the damage is by way of compensation, and as the crime results in these two effects, it is then logical for the civil and the criminal cases to be looked into by the Penal Judge.

Since many Legislations have introduced the consideration of civil proceedings in accordance with the criminal proceedings before them, still many of them have caveated this with two conditions: The first of which is that civil proceedings should be heard only in accordance with the criminal proceedings, since the offence is the source of these two proceedings, and the second of which is that civil proceedings should not be considered by the Criminal Court if the adjudication delays the disposition of the criminal proceedings.

**Sentencing the Witness Who Fails to Attend with a Fine Not Exceeding (1000) Dirhams and Ordering his/her Arrest and Bringing in**

**Limiting the Period of Appeal Against the Sentences in Absentia Issued for Misdemeanors and Violations to Only (7) Days Starting from the Date of the Announcement of the Verdict by a Report Filed in the Criminal Registry of the Court that Issued the Verdict**

**If the Criminal Court Considers that the Incident as Set out in the Referral Order and Prior to its Investigation at the Hearing as a Misdemeanor, it Shall Rule Against its Jurisdiction and Refer it to the Misdemeanor Court**

If, for the purpose of adjudicating a civil case by the Criminal Court, an investigation is required by the nature of the case, the court must refer it to the civil court so as this specialization would not be a reason to prolonging the criminal proceedings, since the civil case has its own civil judge, in keeping with the original principle in law and is only heard on an exceptional basis before the criminal judge.

**7- In doing so, the Legislator was eager to save time for the purpose of completing the criminal proceedings,** as the Criminal Court was required to adjudicate cases of misdemeanors or minor offences referred to it by the Public Prosecutor's Office in connection with a felony, in specific cases as set out in Article No. (141) of the Code of Criminal Procedure and its Amendments.

The Universal Jurisdiction of the Criminal Court means the authority of the Court in the consideration of the dispute before it, even if it does not have jurisdiction in the first place, in accord-

ance with the rules of jurisdiction. If the Court finds that the act assigned to the accused does not constitute a felony, but rather a misdemeanor or an offence, it retains its hand over the case, even though the rules of qualitative jurisdiction required that the case be referred to the Competent Court<sup>(14)</sup>, but for the purposes of expediency, the UAE Legislator departed from the rules of jurisdiction and decided that the Criminal Court should be competent to look into the misdemeanors, into which an investigation was carried out. It is legally established by the Federal Supreme Court and according to Article No. (141) of the Code of Criminal Procedure that articulates that, quote: "[s]hould the Felonies Criminal Court notice that the act, as described in the referral order and prior to its investigation in session, is a misdemeanor, it shall decide its lack of jurisdiction and refer the case to the Misdemeanor Criminal Court", unquote; which means that the Criminal Court requires that it has no jurisdiction to hear

the misdemeanors if the case is referred to it and before it is investigated, and if it proceeds with its investigation, then it shall continue its looking into it ..<sup>(15)</sup>.

**8- The Emirati Legislator has adopted the One-Day Court Initiative,** which was launched by the Council of Ministers based on the directives of His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, UAE Prime Minister and Vice President and the Ruler of Dubai -May God protect him- which aimed to accelerate and facilitate the criminal proceedings, starting from the time of registering the incident until the issuance of the preliminary ruling in it.

The One-Day Court contributes by conducting an investigation by the Public Prosecution, then referring it to the Criminal Court, adjudicating it and implementing the judgment within one day only if the legally prescribed conditions are met. This new judicial system comes within the framework of the state's eagerness to elevate the

legislative and judicial environment in the United Arab Emirates; which enhances the country's competitiveness at the global level, keeps pace with the enormous development the UAE is witnessing at various economic, scientific and social levels, and contributes to the happiness and well-being of its citizens.

The Act permits the establishment of One-Day Courts in cases of misdemeanors only, where the Paragraph No. (2) of Article No. (139) of the Criminal Code of Procedure stipulates that, quote: "[a]s an exception to the provisions of this Act, the Minister of Justice, after taking the opinion of the Supreme Council of the Federal Judiciary, and the heads of the local judicial authorities, as appropriate, shall, in accordance with the laws governing their work, establish the rules governing the operation of the one-day court in the court of misdemeanors, determine its jurisdiction, declare adversaries, its system of hearings and other procedures.", unquote.

## \* Margins

(1) Ahmed Fathi Sorour, AL-Waseet Fi Qanoon AL-Ijra'at AL-Jaza'eiah (Volume in the Code of Criminal Procedure), Dar Al-Nahda Al-Arabiya, Cairo, Egypt, (1985), Page No. (465).  
 (2) This is reflected in the provision of Article No. (30) of the Code of Criminal Procedure and its Amendments, which stipulates that, quote: "[t]he judicial police shall inquire about crimes, search for their perpetrators and collect the necessary information and evidence for investigation and indictment.", unquote, as well as Article No. (41) of the same law that articulated that, quote: "[t]he judicial police officers, during the performance of their duties, may directly seek the assistance of the public force.", unquote, while Article No. (43) of the previous law stipulated that, quote: "[i]n case of a red-handed crime, the judicial police officer has to go forthwith to the place where the fact occurred, examine and preserve the material facts of the crime, write down the existing state of places and persons and anything else that may lead to revealing the truth and he has to take the statements of those present or those who might give some explanations as concerns the fact and the perpetrator. He has, in addition, to inform immediately the public prosecution of his move. The public prosecution has, upon its notification of a red-handed crime, to proceed immediately to the place of occurrence of the fact.", unquote. And Article No. (47) of the same law, which stated that, quote: "[t]he judicial police officer must hear the deposition of

the accused immediately upon his arrest, apprehension and arraignment and if he does not submit proof of his innocence, he shall be sent, within forty-eight hours to the competent public prosecution. The public prosecution shall interrogate the accused within twenty-four hours then it shall order either his arrest or his release.", unquote.

(3) Mahmoud Mahmoud Mustafa, Tatawwor Qanoon AL-Ijra'at AL-Jina'eiah Fi Masr Wa Ghayruha Min AL-Dowal AL-A'arabeiah (The Evolution of Criminal Procedure Law in Egypt and Other Arab Countries), Cairo University Press, Second Edition, (1985), Page No. (39) et seq.

(4) Abdelhamid Al-Shawarbi, AL-Ta'aleeq AL-Mawdoo'ei Ala Qanoon AL-Ijra'at AL-Jaza'eiah (Substantive Commentary on the Code of Criminal Procedure) "First Book, Criminal Proceedings", Al-Ma'arif Establishment, Alexandria, Egypt, (2002), Page No. (603).

(5) Akram Tarad Al-Fayez, AL-Sora'ah Fi AL-Mohakamat AL-Jaza'eiah Bain AL-Nathariah Wa AL-Tatbeeq (Speed in Criminal Trials Between Theory and Practice) Study in Jordanian Criminal Law, Journal of Legal Sciences, Iraq, University of Baghdad, First Issue, (2018), Page No. (37).

(6) See Article No. (104) of the Federal Code of Criminal Procedure, which states that, quote: "[t]he public prosecution member must immediately interrogate the arrested person or, if this be impossible, he should be put in one of the specialized places of detention until his interrogation. The

period of detention must not exceed twenty-four hours after which the administrator of this place has to send the detained person to the public prosecution which must instantly interrogate him, otherwise order his release", unquote.

(7) See Article No. (128) of the Code of Criminal Procedure, which reads as follows, quote: "[a]s soon as the public prosecution finishes with the investigation and disposes of the case file by referral, it shall forward the file to the competent court", unquote. As well as Article No. (130) of the same Act that provides that, quote: "[w]here, subsequent to the issuance of an order of referral, an event occurs that necessitates a complementary investigation, the public prosecution has to proceed with it and submit the report to the court", unquote.

(8) Fatehiah Mohammed Qourari, Ghannam Mohammed Ghannam, AL-Mabade'i AL-A'ammah Fi Qanoon AL-Ijra'at AL-Jaza'eiah AL-Ittihadi Li Dwalit AL-Imarat AL-A'arabeiah AL-Mottahidah (General Principles in the Federal Code of Criminal Procedure of the United Arab Emirates), Dar AL-A'afaq AL-Mushriqah (Publishers), Sharjah, United Arab Emirates, Second Edition, (2011), Page No. (286).

(9) Ibrahim Suleiman Al-Qatawneh, AL-Mohakamah AL-A'adelah (Fair Trial) "Comparative Study", Journal of Sharia and Law Sciences, Jordan, Volume No. (44), Edition No. (1), (2017), Page No. (174).

(10) Akrem Trad Al-Fayez, op. cit (Same Previous Reference),

Page No. (41) and what follows, and see Article No. (163) of the Federal Code of Criminal Procedure; which stipulated the following, quote: "[o]rder and administration of the hearing are entrusted to its presiding judge who, with due compliance with the law on the Law Profession, may in this respect oust whoever disturb the order and, if he refuses to obey, the court may condemn him instantly to a twenty-four-hour-detention or to a fine of one hundred Dirhams and its judgment in this respect is final. The court may, at any time prior to the end of the hearing, go back on its judgment or decision issued under the preceding paragraph", unquote.

(11) Federal Supreme Court Ruling, Appeal No. (860) of (2019), Penal, issued on (31 January 2020).

(12) Omar Fakhri Abdulrazak Al-Hadithi, Haq AL-Mottahum Fi Mohakamah A'adeluh (The Right of the Accused to a Fair Trial), DarAl-Thaqafah for Publishing and Distribution, Jordan, (2005), Page No. (22).

(13) See Articles Nos. (229), (234), (244) of the Code of Criminal Procedure, and its Amendments.

(14) Laftah Hamil Al-Ajili, Haq AL-Sora'ah Fi AL-Ijra'at AL-Jaza'eiah (The Right to Speed in Criminal Proceedings), Al-Sanhouri Library, Beirut, Lebanon, Second Edition, (2019), Page No. (179).

(15) Federal Supreme Court, Appeal No. (705) of (2019), Penal, Issued on (2 March 2020).

**Article No. (139) in the Second Paragraph of the Code of Criminal Procedure Provides that One-Day Courts May Be Established in Cases of Misdemeanors Only**



# Moving the Request for a Constitutional Interpretation Before the Federal Supreme Court



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**Article No. (99/4) of the Federal Constitution explicitly specifies those who have the right to request the interpretation of a constitutional text, and this paragraph has limited that right to, quote: “[o]ne of the Authorities of the Federation, or the Government of one of the Emirates”, unquote, meaning that the constitutional interpretation is limited to the Authorities of the State, Federal be it or Local.**



To date, some federal and local authorities have used this right. On the federal side, requests for interpretation have been submitted by the Federal National Council, represented by its President<sup>(1)</sup>, the Council of Ministers, the Criminal Division of the Abu Dhabi Federal Court of First Instance<sup>(2)</sup>, and the Public Prosecutor<sup>(3)</sup>, as well as by some local authorities such as the Emirate of Umm Al Quwain<sup>(4)</sup>. The request for interpretation of a constitutional text is limited to the authorities of the state, as per the following:

**First: Federal Authorities:**

The provision for federal authorities is contained in section No. (4) of the Constitution entitled “Federal Authorities”. Article No. (45) of the Constitution defines these Authorities as the Supreme Council of the Federation, the President and Vice-President of the Federation, the Council of Ministers of the Federation, the Federal National Council and the Federal Judiciary. However, the constitutional text does not resolve every dispute in this regard, and while the request for interpretation submitted by the first two bodies, “The Supreme Council of the Federation-President and Vice-President”, does not raise any problems, otherwise, the other

federal authorities raise many questions about their right to request constitutional interpretation.

**The Council of Ministers (The Cabinet):**

For the Council of Ministers, when considering the use of its right to request interpretation, we have a question as to whether this right is limited to the Council as a collective body, or is it also the prerogative of Ministers as individuals? In fact, the federal authorities, formed by councils, have some differences in how they use this right and who represents them in this respect. However, since its first consideration of a request for constitutional interpretation, the Federal Supreme Court has resolved this matter. On the occasion of the request for interpretation submitted by the Ministry of Interior to clarify some of the provisions of the interim constitution of the Federation, the Public Prosecution argued that the Court had no jurisdiction to consider the request for interpretation on the basis that the fourth paragraph of Article No. (99) of the Interim Constitution of the Federation appointed only those who have the right to request an interpretation and confined it to, quote: “[o]ne of the Authorities of the Federation or the Government of one of the Emirates.”, unquote. Article No. (45) of the Constitution defines the federal authorities, including the Council of Ministers of

// **The Phrase “Federal Authorities” Raises Many Questions about the Right to Request a Constitutional Interpretation**



### The Request for Interpretation Held for the Council of Ministers of the Federation as a Federal Authority Extends to the Minister

the Federation, thus reducing the competence of the Minister separate from the Council, which is not represented by the Minister in this regard and is not considered a legal representative of him/her, in line with the provision of Article No. (52/1) of Act No. (10) of (1973) concerning the Federal Supreme Court. The Public Prosecutor's Office set an example in this respect in order to confirm its stance, namely, the case of a member of the Federal National Council, who is not considered a federal authority in the exercise of his/her duties, and stressed that, even with a broad interpretation, it is the President of the Council of Ministers of the Federation who can be considered a deputy and representative of that Council<sup>(5)</sup>.

However, the Court rejected this argument on the grounds that the provisions of the interim constitution of the federation stated that, quote "[t]he Council of Ministers, as an authority of the federation, has been made as a cohesive and unified body with its own entity and its constituent elements, verifying the unity and consistency of the ministerial work, following up on the implementation of the general policy of the government at home and abroad and collectively answerable

to the President of the Federation and the Supreme Council of the Federation, without prejudice to the personal responsibility of both the President of the Council and its Members for the work of his/her Ministry or Office", unquote<sup>(6)</sup>. The Court also affirmed that Federal Law No. (1) of (1972) on the competencies and powers of Ministers, quote: "[d]efined these powers and competencies in a manner that reflects the various aspects of the activity of the Council of Ministers as the executive body of the federation, and vested in it all of the various utilities and facilities necessary for the conduct of human and material forces in the state to achieve the general objectives, making at the head of each ministry a minister who is the top of the administrative hierarchy in relation to his/her Ministry, in which he/she exercises his/her powers that are derived from his/her membership in the Council of Ministers bestowed upon them by law within the scope of the affairs entrusted to that Ministry, and in his/her capacity as such, the Minister exercises the federal authority in all matters relating to his/her Ministry, including administrative, financial, legal and other matters, and represents it before all other authorities, and there is no doubt that



the exercise of this power conferred upon him/her by law, in implementation of the provisions of the Constitution, is a broad power granted to the Minister as long as it is not restricted or allocated by law.", unquote<sup>(7)</sup>.

The Court did not leave the analogy taken up by the Public Prosecution Office as an argument and evidence for its position of refusing the representation of the Minister alone to the Council of Ministers, but it had responded to that by saying that, quote: "[t]here is no place for analogy with regard to a member of the Federal National Council, who is not considered a federal authority in and of him/her self, when he/she exercises his/her duties, because the constitution or law did not specify a member of the Federal National Council with any authority that he/she exercises independently of the Council to which he/she belongs, as is the case with the Minister.", unquote<sup>(8)</sup>.

In this respect, the Court concluded by clarifying that, quote: "[t]he request for the interpretation vested in the Council of Ministers as a federal authority in the concept of Article No. (99), fourth paragraph, of the Provisional Constitution of the Union, shall be extended to the Minister, and

he/she shall be entitled to exercise it if he/she encounters an ambiguity in the conduct of the affairs of his/her Ministry, in order to clarify that ambiguity so that he/she may proceed with his/her work in a clear and sound manner, in an effort to ensure that the conduct of his/her Ministry's work is closely linked to the provisions of the Constitution and their proper application, and the Council of Ministers may regulate this right if it wishes to do so, in accordance with the requirements of the public interest", unquote.

The Court finally concludes that, quote: "[s]ince this, and the request for interpretation in question, relates to the affairs of the Federal Ministry of the Interior, which is headed by the applicant, then the request is made by a federal authority competent to submit it, and therefore the defense submitted by the Public Prosecutor's Office must be rejected", unquote<sup>(9)</sup>.

#### The Federal Judiciary:

With regard to the right of the Federal Judiciary to request an interpretation of the provisions of the Constitution, according to Article No. (45) of the Constitution, the Federal Judiciary is a Federal Authority, but the problem lies in the extent to

### The Federal Supreme Court Settled the Controversy and Granted the Right to the Federal Judicial Courts to Submit a Constitutional Interpretation Application



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There Are Still  
Many Questions  
About the Phrase  
“One of the  
Authorities of the  
Federation” that  
Have Not Been Yet  
Resolved by the  
Federal Supreme  
Court

which it can exercise this right. To begin with, it must be made clear that it is inconceivable that the federal court should ask itself, or any other federal judicial body, to interpret a constitutional provision in an abstract manner. And in addition to the illogicality of this possibility, it runs counter to the principle that the judge ought to not have contact with the dispute on his/her own initiative, and even if it can be said that the interpretation is not a “Dispute” in the strict sense of the word, we are still dealing with a principle that governs all of the competencies of the Judiciaries. Even while recognizing the right of the federal courts to request an interpretation, in the case of a dispute in their court, there is more than one consideration that precludes this. On one hand, it can be said that a Lower Court’s request to the Supreme Court to interpret a constitutional text concerning a dispute before it, involves the abandonment of that court’s function. The judge is tasked with enforcing the law, and one of the vocabularies of this application is to interpret the texts governing the problem that is raised, in a bid to clarify its meaning and determine the content of its terms. On the other hand, the interpretation issued by the Supreme Federal Court is described as compulsory<sup>(10)</sup>, and accepting the courts’ interpretation on a case being adjudicated by it put on hold the right to appeal a ruling or overturn it, because the interpretation that will be

announced by the Federal Supreme Court binds the court that requested it and the one to which the appeal will be submitted<sup>(11)</sup>. Despite all of these questions raised, however, the Federal Supreme Court has resolved the controversy regarding the right of federal judicial bodies to submit requests for constitutional interpretation, and the court has accepted the request for interpretation submitted by the Criminal Division of the Abu Dhabi Federal Court of First Instance, considering it as one of the authorities included within the scope of the authorities of the federation that have the right to submit constitutional interpretation requests<sup>(12)</sup>, where it, quote: “[h]as ascertained -Given the discretionary power that it possesses - that disposition of the substantive case that is before it, “Criminal Case No. (310/2011), Penal, Capital”, requires beforehand a determination of the extent of its jurisdiction in the consideration of the crimes assigned to the accused, by interpreting the last paragraph of Article No. (99) of the Constitution of the Federation, in order to determine its assumptions and the scope of its application”, unquote<sup>(13)</sup>. Thus, it is clear from the foregoing that the phrase “One of the Authorities of the Federation”, in the interpretation of the constitutional texts, raises many questions when examining its details, although the Federal Supreme Court has resolved some of these queries, but has not yet had the opportunity,

so far, to render its opinion on the others.

### Second: The Government of one of the Emirates:

If the expression “One of the Authorities of the Federation” has raised many questions, then the expression “Government of one of the Emirates” is no less interesting in raising many question marks too, for this term encompasses more than one meaning for the Jurists<sup>(14)</sup>. From a narrow perspective, the Government means “Executive Power”, and from a broad perspective the Government means “The System of Governance in the State”, and the term Government may extend to mean “All the Authorities of the State”, as it also may sometimes be used to denote “Ministry”. In this respect, the Supreme Federal Court accepted the application filed on (11) October (2000) by the Head of the Amiri Diwan (Government Office) of the Government of the Emirate of Umm Al-Quwain with the approval and sanctioning of His Highness the Ruler of the Emirate. The Applicant had filed with the Registry of the Federal Supreme Court an application requesting the interpretation of certain provisions of the constitution, concerning the extent to which the provisions of Federal Law No. (3) of (1996), regarding the jurisdiction of Shari’a Courts to hear certain crimes, were mandatory. However, the Public Prosecutor’s Office had argued that

the application was inadmissible on the grounds that it amounted to nothing more than a request for establishing an unconstitutionality, but the Court had refused to take up this argument, and what was included in the grounds of this rejection was that the Constitution of the State of the Union, quote: “[a]uthorized the federal authorities and the governments of the Emirates to request the Federal Supreme Court to request the interpretation of the provisions of the Constitution pursuant to Article No. (99/4) thereof”, unquote<sup>(15)</sup>. In fact, here we can analogize the right to request a constitutional interpretation to the right to challenge the unconstitutionality of a certain text (s), since collectively they both require determining the scope of a constitutional text and identifying its aims and its building blocks, and if the challenge to any unconstitutionality is decided by the Ruler of the Emirate as its representative, then it is more likely that the Ruler is also entrusted with submitting the request for interpretation. We can also recognize here the important role played by the Federal Supreme Court in interpreting the provisions of the Constitution, clarifying their meanings and determining their aims, and it is a role that has been entrusted to those who are well capable of taking on such a role. After all, the Court is the Custodian of the Constitutional Text and monitors the extent to which its respectability is adhered to.

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The Phrase “Gov-  
ernment of one  
of the Emirates”  
Carries More Than  
One Meaning by  
Jurists

## \* Margins

(1) Federal Supreme Court-Constitutional Provisions - Appeal No. (2) of (2020)-Judicial - Constitutional - on (27) April (2020).

(2) The Department requested the interpretation of the last paragraph of Article No. (99) of the Federal Constitution. See Case No. (3) of (2011), Constitutional of (2012), Dated (2) April (2012), See also Case No. (4) of (2011), Constitutional of (2012), Dated (2) April (2012).

(3) Federal Supreme Court-Constitutional Provisions-Appeal No. (1) of the Judicial Year (17) - Constitutional-Dated (19) December (1990), and the Public Prosecutor had filed on (21) February (1989) a request for interpretation of the provisions of the Articles Nos. (121, 148, 149, 150, 151) of the Provisional Constitution of the United Arab Emirates, to indicate whether the promulgation by the Federation

of Federal Penal Law No. (3) of (1987) resulted in the total striking down of both the domestic Penal Code of the Emirate of Abu Dhabi of (1970) and the domestic Penal Code of the Emirate of Dubai of (1970) of all of their provisions, and the court rejected the application on grounds unrelated to the capacity of who submitted it, as will be illustrated later on. (4) Case No. (2) of the Constitutional Year (28) of (2009), Dated (15) May (2009).

(5) Federal Supreme Court, Case No. (1) for Constitutional Year (1) of (1973), (29) November (1973).

(6) The Supreme Federal Court, Case No. (1) of Year (1), Constitutional year of (1973), (Interpretation), (29) November (1973), Publications of the United Arab Emirates University - Ministry of Justice, Series of Rulings of the Supreme Constitutional Court - Constitutional Chamber, Since the

Establishment of the Court until (2008).

(7) Previous Judgement.

(8) Previous Judgement.

(9) Previous Judgement.

(10) Article No. (99/4) of the Constitution.

(11) Fathi Fikri, AL-Tantheem AL-Dustoori Lil Sultat AL-Itihadeiah Fi Dawlit AL-Imarat AL-Rabeiah AL-Mottahidah (Constitutional Organization of Federal Authorities in the United Arab Emirates)-Critical Analytical Study, Dar Al-Nahda AL-Arabiya, Cairo, (1999), Page No. (198).

(12) Case No. (3) of (2011), Constitutional for (2012), Dated (2) April (2012); See also case No. (4) of (2011), Constitutional for (2012), Dated (2) April (2012); Case No. (5) of (2011), Constitutional for (2012), Dated (2) April (2012).

(13) Previous Judgement.

(14) See, for example, Tharwat Badawi, AL-Nuthum AL-Seyaseiah (Political Systems), Dar Al-Nahda AL-Arabeiah, Cairo, (1994), Page No. (185) et seq. Mohammed Kamel Abdul Nabi Obaid, Nuthum AL-Huku, Wa Dustoor AL-Imarat (Governance Systems and the Constitution of the UAE), Comparative Analytical Study of the Constitution of the United Arab Emirates, in light of General Constitutional Principles and Contemporary Governance Systems, Dubai Police Academy, (1997), Page No. (320), Mustafa Afifi-AL-Wajeez Fi Mabadi’e AL-Qanoon AL-Dustoori Wa AL-Nuthum AL-Seyaseiah AL-Moqarenah (Brief on Principles of Constitutional Law and Comparative Political Systems)-First Book, AL-Bayan AL-Tijareiah Press, Dubai, (1988), Page No. (228) et seq.

(15) Case No. (2) of the Constitutional Year (28) of (2009), (15) May (2009).

## Amendments to the UAE Civil Transactions Law and Their Impact on Determining the Applicable Law to the Stateless or Multi-national in Matters of Marriage



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Based on the importance of personal status issues and in order to implement the objectives of the legislation and in order to preserve the interest of the UAE Society, the UAE Legislature adopted new controls to determine the law applicable to personal status disputes of foreign element by issuing Federal Decree No. (30) of (2020) amending certain provisions of Federal Law No. (5) of (1985) by issuing the Civil Transactions Law, that provided for the enforcement of the Law of the country in which the marriage took place with respect to the subject of marriage, its effects and its ending, in accordance with Articles Nos. (12) and (13) as amended.

### A Brief History of Attribution Rules in Matters of Personal Status in UAE Law:

The UAE Lawmaker was among the lawmakers who favored the introduction of a Nationality Control Component to determine the personal law to be applied.

Since the issuance of UAE Federal Civil Transactions Law No. (5) of (1985), the Nationality Law has been adopted as a control reference to ascertain the law applicable to disputes involving a foreign element in the field of personal status.

In other words, the tilting towards the law on the nationality of the spouses to determine the law applicable to the subject of marriage in Article No. (1/12), and the law on the nationality of the spouse at the time of the occurring of the marriage to determine the law applicable to the effects of marriage in Article No. (1/13), and also the law on the nationality of the spouse but at the time of filing a law suit to determine the law applicable to divorce or physical separation or at the time of the divorce in relation to the termination of the marital relationship by divorce in Article No. (2/13), and then the exception that reserved the scope for the application of the UAE Law in matters of marriage on the basis of the Emirati Nationality of one of the parties to the marriage in Article No. (14).

In addition to adopting the Nationality Law also in matters of inheritance and succession by applying the Nationality Law of the inheritor at the time of his/her death in Article No. (1/17), as well as the matter of the will in Article No. (2/17).

Thus, the UAE Legislator's tilting towards the nationality control factor to determine the personal law appears to be similar to that of most Arab legislators.

### Legal Questions about the Fate of Article No. (24):

The implications of these amendments raised several questions about how to determine the law applicable to the stateless or multinational persons before the Judiciary of the UAE, where Article No. (24) of the Civil Transactions Law states that, quote: "[t]he law of the United Arab Emirates shall apply with regards to stateless persons, or to persons having

multiple nationalities. However, people proven to hold the UAE nationality and the nationality of another State, the Law of the United Arab Emirates shall be applied", unquote.

It would be appropriate to address the issue at the pre-and post-adjustment stage and as per the following:

#### Pre-Adjustment Stage:

By reading the text of the above-mentioned Article No. (24), it turns out that the UAE Legislator has developed a solution to determine the law applicable to stateless or multinational persons, if the attribution rule refers to the application of the Nationality Law of the person concerned.

#### Case One: One of the Nationalities Held by the Person is Emirati:

In the event that a person holds several nationalities, including Emirati nationality, the Emirati Judge in this case applies the UAE Law as a victory and bias towards the Emirati Nationality held by this person, based on the text of the second paragraph of Article No. (24) (1) and this is the solution followed in the comparative law, where it has been introduced by the Egyptian Civil Law in Article No. (25), the Iraqi Civil Law in Article No. (33/2) and the Jordanian Civil Law in Article No. (26) and most Western Legislation such as Spanish, Portuguese, Romanian and Mexican Laws, and was stated by the Judiciary in Belgium, France and Denmark (2), in addition to it being considered as the solution adopted by the Hague Convention in (1930) on the conflict of laws in certain matters of Nationality (3).

#### Second Case: Nationalities which the Person Holds, do not Include the Nationality of the State of the Judge:

In the case of a multiplicity of nationalities held by a person and not including the nationality of the Judge's State, the prevailing view in comparative law goes to the implementation of the criterion of the Actual Nationality (4), i.e. the nationality to which the individual is actually connected to and is more real than others, through the factual and social circumstances surrounding him/her, such as the place of birth, residence or domicile of choice



The Amendment Text Provided for the Implementation of the Law of the Country in which the Marriage Took Place with Respect to the Subject Matter, Effects and Expiration of the Marriage



Has Article No. (24) Been Suspended in Matters of Marriage After the Law on the Place of Conclusion of Marriage Became Applicable? And if that Occurred, what is the Point of it still Being on the Statute Book, and why was it not Cancelled?



**Is Article No. (24) an Exception to the Rules of Attribution of Marriage Similar to Article No. (14) of the Same Law?**

and the exercise of general civil rights, as well as the extent of his/her actual integration into his/her national groups, compared to the rest of the countries, to which they belong. This solution was adopted by the International Court of Justice in the famous “Netbaum” Case in (1955) (5), in addition it was the solution adopted by many comparative laws such as Austrian and Hungarian Law Turkish, Swiss, French and Italian (6). As for those with Unknown or non-existent nationality, the comparative law has adopted a measure that is near to this solution, where the law of the state in which those persons reside or the law of residence is applied to these persons as an alternative to the application of the law of nationality in this case, because of the difficulty or impossibility of its existence, which means the need to search for the law of actual (De facto) belonging of these persons.

This solution has been embraced by the (1954) New York Convention on the International Situation of Stateless Persons and the Geneva Convention on the International Situation of Political Refugees.

**Unique and Decisive Solutions Adopted by the UAE Legislature:**

The Emirati Legislator adopted a different position and departed from what is agreed upon in comparative law. The first paragraph of Article No. (24) has developed a unique and exceptional solution, adopting the application of UAE Law in the event that a person is multi-national and not including the nationality of the UAE, stateless or unknown persons. The Article stipulates that, quote “[t]he law of United Arab Emirates is applied in the case of persons of unknown nationality, or who have multiple nationalities at one time...”, unquote. This solution was not welcomed by the majority of Jurists, except for some (7), where they saw in it a decisive solution to the problem of the law governing multiple or unknown nationality, justifying that it relieves the Emirati Judge from great hardship and trouble that is not easy to encounter, if he/she wants to search for the law governing disputes related to personal status, especially marriage for those concerned persons.

However, it remains a strange and unusual solution in Comparative Law and has been subjected to a

lot of criticism on the part of Jurisprudence (8), especially as it may result in stripping the ruling issued in accordance with the UAE Law of all value before the judiciary of other countries, which can be undesirable when implemented outside the UAE. This jurisprudence has repeatedly called upon the Emirati Legislator to adopt what is consistent in the law and comparative judiciary when it reviews the texts of conflict of laws contained in the Codification of UAE Civil Transactions (9), and truth be told that this solution, which came in the text of the first paragraph of Article No. (24) is bizarre, as it requires a single solution in all circumstances that occur, which is the application of the UAE Law, whether the person is stateless or multi-national, and whether the UAE nationality is among these nationalities or not, which made it a strange and criticized text by most jurisprudence, except for those who saw in it a decisive and comfortable solution for the Emirati Judge from the rigmarole of searching for the actual nationality to enforce its law on the dispute in question.

In a different view, this trend of amendment contradicts the philosophy underlying attribution controls of ascribing a situation to the most relevant of laws, which is of great importance in matters of marriage, as it is closely related to the values and beliefs of persons.

As we know, the UAE Judiciary has traditionally applied UAE Law in matters of marriage, whether its effects or expiration - Which the rules of attribution referred to the enforcement of the law of the nationality of the spouse as we have previously shown - if the spouse is a multinational and whether he/she is a holder of the nationality of the Emirates or not, stateless or unknown. However, in the case where the spouse is a holder of one foreign nationality (10), the UAE Judiciary applies its law and does not apply the Law of the UAE, if the opponents called for the enforcement of the Attribution Rule and proved this law before the court and duly submitted it (11).

**What is the Status of Article No. (24) in its entirety Following the Amendment of the Attribution Rules Pursuant to Decree-Law**

**No. (30) of (2020) and the Adoption of the Application of the Law on the Place of Conclusion of the Contract in Matters of Marriage?**

To answer this question, it may be appropriate to refer to the circumstances underlined the issuance of the said Article and to look for the wisdom of the Legislator at that time when it issued this Article in the way it has issued it in.

In the course of the criticism of the solution adopted by the UAE Legislator in Article No. (24), some jurisprudence (12) stated that this unusual solution was not the one in which the draft text was drawn up, where the wording of the draft was, quote: “[t]he Judge shall appoint the law that must be applied in the case of stateless persons and those who are proven to have more than one nationality at one time”, unquote. However, this solution was veered away from in the second half of the text where it stated that, quote: “Where the persons that are proven to have more than one nationality at one time ...”, unquote. But the text was changed to become what it is now.

This jurisprudence continued its analysis, considering that this text in its current form is surrounded by a drafting error, and after the Legislator decided to apply the UAE Law for stateless and multi-national persons, it went back and added that, quote: “[w]here the persons who ...”, unquote, and this wording means a difference in the rule between the two parts of the said Article, and if the Legislator had wanted to treat all circumstances equally, it would have opted to say that “The Law of the United Arab Emirates shall apply in the case of persons of unknown nationality or those who are proven to have multiple nationalities at one time, whether the nationality of the state is among them or not”. We believe that this consideration is sound and more agreeable and is supported by what was stated in the explanatory memorandum to the Civil Transactions Law, commenting on the text of Article No. (24), where the wording of this Article read as follows, quote: “[t]he Judge shall appoint the law that must be applied in the case of persons of unknown nationality or persons of proved multiple nationalities at one time. How-



ever, for persons who have simultaneously been established to have the nationality of the United Arab Emirates and the nationality of another state, it is the Law of the United Arab Emirates that must be applied”, unquote.

This indicates that the will of the Legislator was heading towards adopting what is stable in comparative law, and this is evident from the commentary of the explanatory memorandum on the proposed text of Article No. (24) before it was changed, as it stated that, quote, “[t]his is a general principle that has been established in international custom ... It should be borne in mind that granting the judiciary discretion authority, in accordance with the provisions of this Article is preferable over limiting its jurisprudence. In cases of negative conflict of nationality, the judiciary will mostly use the law of the person or his/her place of residence, which is the National Law in most cases, and also the law in the case of positive conflict, where the nationality of the United Arab Emirates is not involved in the nationality dispute, which the circumstances show that such nationality is being attached to by the person concerned more than other nationalities”, unquote, (13). Consequently, the Legislature’s change of the text of Article No. (24), at the time of promulgation of the legislation, resulted in the said Article becoming flawed in terms of wording,

**The Will of the Legislator is Moving Towards the Adoption of What is Consistent in Comparative Law**

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The UAE Legislator's Abandonment of the Nationality Control Criterion and its Replacement with the Marriage Conclusion Place Came to Ease the Burden on the UAE Judiciary

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The Formulation of Rules Governing Personal Status Matters Requires a lot of Research and Study

and flawed and criticized for in terms of its content.

#### Reducing the Burden on the UAE Judiciary:

In the light of the current wording of Article No. (24), it is not palatable to say that it may have been intended for the Legislator to make Article No. (24) an exception to the Rules of Attribution, similar to Article No. (14), since it is a supposition that was rejected by the previous analysis, in which we tried to elucidate the will of the legislator, and such supposition is far from being considered as such. All that can be concluded here is that the Legislator, even if it did not adopt what is consistent in the comparative law, was looking for a solution that would lift a heavy burden off of the Emirati Judiciary by investigating the actual nationality or the diligence to know which law applicable to multiple or non-nationality person (s).

Whatever the case may be, and based on the previous analysis, it is established that Article No. (24) in its wording puts forward a solution - Albeit Critical- due to the difficulty of determining the applicable law when nationality is multiple or lack thereof, which is the functional role assigned to it, since the UAE Legislator before the amendment has sided - As we have shown- with the Nationality Law, preferring it to the residence control factor, in determining the law applicable to matters of personal status. And even with the advantages of working with the nationality control factor, it is not without its problems and shortcomings that are centered mainly in the difficulty of determining the applicable law if a person is of unknown nationality or stateless or carries several nationalities at once, which is what prompted Legislators in comparative law, including the UAE Legislator, to address this difficulty by embedding the text of Article No. (24) within the Rules of Attribution, and incorporated it with solutions that are under study.

#### Diminishing the Role of Article No. (24) in Matters of Personal Status:

Based on the above explained, and in view of the understanding of the functional role played by Article No. (24), as it came to develop solutions to the problems of the introduction of the Nationality Control

Factor in determining the personal law, it can be said that its role has been significantly reduced in matters of personal status, and completely disabled in matters of marriage, and actually the situation has become such that the UAE Legislator has abandoned the Nationality Control Factor and replaced it with the control factor of the place of the conclusion of the marriage, whether with regard to its subject, effects or ending, and then the need for Article No. (24) has become irrelevant, where the judge will instead apply the law of the place of concluding the marriage on matters of marriage, regardless of the nationality of the spouses and whether they are of multiple nationality or without it, unless the dispute is related to the form of marriage; where the UAE Legislator considered marriage valid in accordance with the law of the place of its conclusion or the law of the nationality of the spouses, according to Article No. (2/12), and here it seems that this what makes Article No. (24) needed, if one or both spouses have multiple or no nationality.

#### Special Controls Impose Different Visions:

In contrast, Article No. (24) is still needed in other matters of personal status, especially those relating to inheritance and wills, where the UAE Legislator has retained the Nationality Control Factor to determine the law applicable to inheritance or the subject of the will, according to Article No. (1/17, 3 & 4), and will therefore assume its functional role based on the implementation of its solutions if the inheritor or testator is stateless or multi-national.

In conclusion, it is indisputable that the issues of personal status are important and serious matters due to their close connection with society and their connection with people's beliefs system, which makes it necessary to undertake a lot of study before drafting any texts or rules that will be used to govern them, as well as the necessity in providing these texts with the explanation and interpretation that they need, and perhaps it would be very appropriate to hold scientific conferences that bring together judges, jurists or specialized jurisprudence experts to reach the realization of the goals of the legislation and the interest of the UAE society.

## \* Margins

(1) Dubai Court of Cassation-Civil Judgments-Appeal No. (122) of (2008), Judicial-Personal Status Department-Dated (10) March (2009), Technical Office (20) Part No. (1), Page No. (562).

(2) See in this issue Dr. Akasha Mohammed Abdel - Al-A'al, AL-Ittijahat AL-Hadeethah Fi Mushkilat Tanazu'o AL-Jenseiat (Recent Trends in the Problem of Conflict of Nationalities)-An original analytical study in Egyptian Law and Comparative Law, AL-Dar AL-Jami'eah (University House), Beirut (1991), Page No. (76) et seq.

(3) See Dr. Hossam Al-Din Fathi Nassif, Mushkilat AL-Jenseiah (Problems of Nationality) A comparative study of the problem of multi-nationality, the problem of lack of nationality, the problem of the Bedoun (Those without a nationality), the problem of nationality of legal persons, and the problem of proof of nationality, Dar AL-Nahda AL-A'arabeiah, Cairo, (2007), Pages Nos. (21-22).

(4) For more detailed analysis and examination about the actual nationality see Dr. Hisham Ali Sadiq, AL-Jenseiah Wa AL-Mawtin Wa Markuz AL-A'ajanib (Nationality, Homeland and Status of Foreigners), Volume No. (I), in Nationality and Homeland, Al-Ma'arif Facility, Alexandria, Page No. (210) et seq.

(5) See the Nottebhom Judgment published in the critical Journal of Private International Law, (RCDIP), (1956), Page No. (238) et seq. Details of the case can be found in Arabic at Dr. Hisham Khaled, Legal Center for Multinationals, Dar AL-Fikr AL-Jama'ei (University House of Thought), Alexandria, (2001), Page No. (173).

(6) See Dr. Ahmed Abdulkarim Salama, UAE Private International Law, Comparative Study, United Arab Emirates University Press, (2002), Page No. (237).

(7) Dr. Awadullah Shayba Al-Hamad Al-Sayed, Ahkam Tanazu'e AL-Qawaneen Wa Tanazu'o AL-Ikhtisas AL-Qada'ei Fi AL-Qanoon AL-Imarati (Conflict of Laws and Conflict of Judicial Jurisdiction Provisions in UAE Law), Dubai Police Academy, (2001), Page No. (172).

(8) See Dr. Akasha Mohammed Abdul Al-A'aL, AL-Waseet Fi Tanazu'o AL-Qawaneen Fi Dawlit AL-Imarat AL-A'arabeiah AL-Mottahidah (Volume in Conflict of Laws in the UAE), Dubai Police Academy, (2008), Page No. (440) et seq. Also Dr.

Ahmed Al-Hawari, Qira'ah Naqdeiah Li Holool Mushkilat Tanazu'o AL-Qawaneen (Critical Reading of Conflict-of-Laws Problems Solutions), Research published in the Journal of security and Law issued by the Dubai Police Academy Year (19), First Issue, January (2011), Page No. (55). As well as Dr. Ali Issa Al-Jasmi and Dr. Ahmed Abdulkarim Salama, UAE Nationality Law-Comparative Study, Dar AL-Nahda AL-Elmeiah in the UAE□ (2019), Page No. (117).

(9) In particular, see Dr. Ahmed Abdulkarim Salama, UAE Private International Law, op.cit. Page No. (238), as well as Dr. Ahmed Al-Hawari, Qira'ah Naqdeiah Li Holool Mushkilat Tanazu'o AL-Qawaneen (Critical Reading of Conflict-of-Laws Problems Solutions), op.cit. Page No. (56).

(10) if a person has one nationality, namely Emirati nationality, the UAE Judge shall apply UAE Law pursuant to Article No. (14) of the Civil Transactions Law, which represents a reserved space for the application of UAE Law in matters of marriage as long as one of the spouses is Emirati at the time of the conclusion of the marriage. In addition, on the assumption that the spouse is a foreign national, the Dubai Cassation Court has established the application of the law of the nationality of the spouse at the time of the conclusion of marriage on the effects of marriage and the application of the law of the nationality of the foreign spouse also at the time of filing the suit for divorce, "Civil Judgments-Appeal No. (36) of (2003), Judicial- Department of Personal Status, Dated (5) October (2003), Technical Office (14), Part No. (1), Page No. (1020). And it is the same principle adopted by the Federal Supreme Court "Civil and Commercial Judgments-Appeal No. (365) of Judicial year (28)-Personal Status Department-Dated (12) June (2007), Technical Office (29), Page No. (67).

(11) The ruling of the Dubai Court of Cassation established that the litigants must prove the foreign law "Ruling of the Dubai Court of Cassation, (20) April (1996), Appeal No. (26) of (1995), Personal Status". (12) Dr. Okasha Mohamed Abdel Aal, Ibid op.cit, Page No. (442).

(13) Explanatory Memorandum to the Civil Transactions Law, Part No. (1), Abu Dhabi Judicial Department, First Edition, (2014), Page No. (41).



# Defining the Procedural System on Execution Orders on Petitions before the Personal Status Court



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The Order-On-Petition System is a procedural legal system in which the applicant aims to obtain temporary judicial protection in cases that by their nature require speed and swiftness without prejudice to the origin of the disputed right to prevent a risk or lift a harm that is feared to take place, if not dealt with promptly.

The Judge competent to make such orders relies on his/her jurisdictional authority and not on his/her judicial authority, as he/she decides not on a dispute before him/her, but between two parties facing them.

In order to do so, the Judge may deal with the issue of the right but not to rule on it, but to examine from the appearance of the papers and documents which parties are more worthy and entitled to temporary protection. However, the application in reality has in fact resulted in a number of problems resulting from the lack of control of the procedural system for issuing such orders with regard to matters of personal status; which in many cases has made them veer off of the purpose for which they were originally legislated.

This necessitated the adoption of regulatory measures that would regulate this system in accordance with the rules of justice until such time as it was legislated by the competent authority.

## The Applicable Legal Rules:

Based on the above, the Judicial Inspection Department in Abu Dhabi has concluded a number of observations in this regard, in order to be able to develop a general view of a set of recommendations facing the conclusion arrived at by those observations, reviewing in this context the applicable law on orders on petitions and the competent court to consider them and making legislative comparisons between the procedural system for issuing orders on petitions contained in the regulations of the Civil Procedure Law and those contained in the Personal Status Law.

Article No. (4) of the Personal Status Code provides that, quote: “[i]n the absence of any text in this Law regulating the procedures of any matter, the provisions of the Civil Procedures Law and the Law of Evidence in Civil and Commercial Transactions shall apply”, unquote.

Article No. (10/1) of the Personal Status Code states that, quote “Where the law requires an authorization or approval from the court, or to submit the matter to the judge, the request for the order shall be submitted to the court of the

applicant’s domicile or residence, unless otherwise provided by law”, unquote.

Hence, the Personal Status Law is the law applicable to orders on petitions in matters of personal status and the Court of the Applicant’s Domicile-As concluded by the Court of Cassation in Abu Dhabi-is the court competent locally to consider it.

One of the applications of the Court of Cassation, states, quote “[a]s the case is filed by the respondent against the appellant and relates to alimony and custody, and has a permanent and fixed place of residence in Abu Dhabi, and then the Abu Dhabi Court is the competent court to hear the case”, unquote.

And it cannot be stated here that Article No. (31/2) of the Civil Procedure Code is applicable to the case in terms of determining spatial jurisdiction (Jurisdiction Loci) since the Personal Status Code is a public order issue and it is a private law in accordance with the provisions of Article No. (3) of the Civil Transactions Code and subsequent to the Civil Procedure Code, and Article No. (362) of this Code provides for the annulment of any provision that contravenes or conflicts with its provisions.

## Permission of the Court and Decision of the Judge:

The cases in which the law requires the permission or approval of the court or the law requires the order to be brought before the judge can be summarized as per the following:

- 1- Assigning a Trustee or Guardian.
- 2 -If the suitors are disproportionate in age, by the suitor being twice or more than the age of the betrothed.
- 3 -Marriage of an insane or imbecile or persons in their status.
- 4- Marriage of a person who has reached the age of eighteen but did not finish it “Article No. (30) has been amended by Law No. (8) of (2019)”.
- 5 -Should the most closely related tutor be interruptedly absent, his place of living unknown or impossible to be contacted.

Personal Status Law is the Law Applicable to Orders on Petitions in Matters of Personal Status



**Issuing a Recommendation to the Judges of Provisional Matters Concerning Personal Status Matters in which an Order may be Issued on a Petition in order to Achieve its Purpose**

- 6- Acceptance by the Tutor of a gift or a will to a minor saddled with obligations.
- 7- Authorizing a minor to receive all or some of his/her assets to manage them unless he/she has been sentenced to confinement or disputed by the Tutor or Guardian, then it shall be within the jurisdiction of the Personal Status Judge.
- 8- Permission to abandon tutorship on assets.
- 9- Permission to dispose of the property of the minor in the form of a transfer of ownership or the establishment of a right in-kind thereon, and the issuance of which shall have an apparent interest assessed by the court.
- 10- Permission to borrow for the benefit of the minor and not contrary to the provisions of Islamic law.
- 11- Permission for the Tutor to continue running the assets returned to the minor and he must abide by the limits of this permission.
- 12- Permission for the Tutor to rent the minor's property for a period extending beyond one year after he/she comes of age.
- 13- Permission for the Tutor to spend on himself from the money of the minor if the alimony is due on him and to spend from it on whom an alimony is required by the minor towards them.

- 14- Authorizing the father to sell his son's property to invest the return for himself as well as buying his son's property for himself, his wife or other children, and also selling his property or the property of his wife or other children's property to his son.
- 15- Permission for the validity of the will of the interdicted for reasons of foolishness or negligence in acts of worship.
- 16- Permission for the Tutor to return the will if the legatee is a fetus, minor or interdicted.
- 17- Proof age of adulthood.

**Practical Practices on the Most Important Cases' Requests:**

Despite this enumeration, practical practices have resulted in the most important requests, namely:

- 1- Receipt of a passport.
- 2- Receipt of proof papers and health insurance cards.
- 3- Obligation to renew the establishment of payment of school fees.
- 4- Renewal of the identity card and delivery of a summary of the registration record.
- 5- Handing over a child for medical examination.

- 6- Handing over a child to their caregiver.
- 7- Transfer of traffic violations.
- 8- Enrolment of children in schools.
- 9- Payment of fines for violating the conditions of residency.
- 10- Vision.
- 11- Interim alimony.
- 12- Travel ban.
- 13- Authorizing travel without the consent of the Guardian.
- 14- Preparation of facilities for nursery housing.
- 15- Delivery of the lease of the nursery housing.
- 16- An obligation to hand over the wife's effects.
- 17- Transferal of children from schools.
- 18- Authorization to conduct a medical examination on an adult who cannot manage their own affairs.
- 19- Authorizing the caregiver to pick up children from school daily.
- 20- Banning a divorcee in an irrevocable divorce from travel.
- 21- Temporarily having custody over children until the disposition of the substantive cases.

Since this diversity is not limited and requires legislative intervention by amending the above-mentioned Article to achieve the intent of the legislator, this, however, does not preclude the taking of regulatory actions on this matter by recommending to the Judges of Provisional Matters the personal status issues in which an order-on-petition may be issued, in order to achieve its intended purpose.

**Jurisdiction to Consider Petitions Submitted in Personal Status Matters:**

It avoids squabbling in litigation and burdening the judiciary with the consideration of an unlimited number of them, in a manner that saves time and effort for the specialized judges and avoids the problems that resulted from these practices, which we summarize as per the following First: Orders-on-petitions shall be issued signed by the Judge of Urgent Matters at the Personal Status Court, as soon as he/she issues them as a judge of provisional matters.

It goes without saying that the power of the judge of provisional matters to make orders over petitions is similar to that of the judge of urgent matters, and the point of similarity is that both of them ultimately order a temporary or provisional procedure, but their competence is fundamentally different, where the authority of the judge of urgent matters is a judicial authority, while the authority of the judge of provisional matters is a jurisdictional authority.

Additionally, the urgent-matters judge also issues reasoned judgments, while the temporary judge issues orders without causation, except in the case of an order issued on a petition contrary to a previous order. Moreover, the urgent-matters judge considers the dispute in a public hearing, in which the adversaries are present and present their defense, and confront each other with their own documents and supporting papers, or at least they are provided with the means to attend, make their defense and discuss the defense of their opponents, whereas the judge of provisional matters considers the application submitted to him/her in private without hearing any of the adversaries' statements and without their presence. Urgent judgements are not authoritative before the trial judge, but urgent judgements may be authoritative before the urgent Judge themselves. Urgent proceedings may not be renewed in the future before the same judge or any other urgent Judge.

The veracity of the urgent judgment is provisional, as long as the circumstances have not changed, and no new urgent judgment may be rendered that runs counter to a previous urgent judgment. Orders do not have the veracity of final judgements (Res Judicata), which is consistent with the nature of jurisdictional orders, since their purpose is not to resolve the dispute, but rather to provide provisional measures of urgent protection or stability for some legal statuses, pending the resolution of the dispute by the substantive courts. The jurisdiction of the urgent-matters judge is therefore significantly different from that of the provisional-matters judge in a number of respects, the most important of which is that the

**The Authority of the Urgent-Matters Judge is a Judicial Authority While the Authority of the Provisional-Matters Judge is a Jurisdictional Authority**



**//**  
**The Urgent Judge May Not Issue an Order on a Petition as Long as he/she Has no Jurisdiction Over it, Nor May the Provisional Judge Issue a Ruling in an Urgent Dispute**

decisions of each judge are issued by an authority different from that of the other. Therefore, it is not permissible for an urgent-matters judge to issue an order on a petition as long as he/she does not have jurisdiction over it, nor for a temporary judge to issue a ruling in an urgent dispute, and since the judge in charge of personal status matters is given orders on petitions, in which he/she issues non-reasoned decisions; which, when challenged, are subject to appeal before the same judge, then, consequently, and in fact, and in accordance with the rules set forth above, he/she is considered as a temporary judge. Consequently, we propose that the job title of the judge competent to issue orders on petitions in personal status matters be amended so that such orders are issued by him/her as a provisional-matters judge.

Second: Violation of the order to the authority of a previous ruling that has the force of the final judgement (Res Judicata) and the filing of petitions in several different courts at the same time, such as obliging the Requested-Against Person in a petition to enable his wife (The Applicant) to enter the marital residence that he provided her with, by ordering and obliging him to hand her a copy of the keys to the residence. (Contrary to the authority of judgment no ..... Rentals .... Issued on 10-7-2018 obliging the defendant "Requested against him in the order on the petition above statement" to clear the residence and deliver it to the plaintiff free of materials and persons. The execution of the sentence was carried out on 7-4-2019 under a receipt file with the same date, in accordance with execution article no .....". Third: Abuse of the right to submit orders on petitions as a result of the failure to specify the personal status issues in which orders may be issued.

**Practical Problems:**

This has resulted in some practical problems, some of which are listed as per the following: 1-Issuing orders whose execution may result in the violation of privacy or subjecting the requested-against person to unjustified medical procedures. For example, (Permitting the student and

guiding her, in the presence of the women's police and the competent doctor, to enter the residence of the person requested against; in which she resides and in her presence, for the purposes of receiving the necessary treatment, and to effectuate that, the competent authority could be authorized to break the locks if need be).

2-Issuing orders that violate the law, such as obliging the person in custody to stay overnight at a place other than that which belongs to the person who legally holds the custody.

3-Issuing orders on petitions in cases that do not, by their nature, require speed, and there is no immediate damage to be feared, such as obliging the requested-against person of alimony for a period of months prior to the issuance of the order or obliging the custodial person to hand over the child for a medical examination after the passage of months from the incident that necessitated the submission of the petition.

**Proposed Solutions:**

**First:** To amend the job title of the setting judge, so that such orders are issued by him/her as a judge for provisional matters, since it is followed before him/her the procedures of orders on petitions, and such a judge has his/her own powers, and the decisions issued by him/her are subject to the remedial reviews prescribed by law for these decisions.

**Second:** A legislative amendment to Article No. (10) of the Personal Status Law shall be made in such a way as to specify the cases in which orders may exclusively be issued on petitions, so that the judge may not issue an order on a petition in cases other than those specified in advance. And until such amendment is made, we propose a review of the most important matters relating to personal status and the most dealt with in practice, and on which the judge of provisional matters may issue orders on petitions, and to issue a recommendation to the competent judges so that orders may not be issued on petitions other than those that have been specified, except in the case of necessity, which is subject to the discretion authority of the presiding judge.



**Third:** In order to avoid the violation of the order on a petition to the authority of a previous ruling that has acquired the force of the final judgement (Res Judicata) , we propose that the electronic file of the request for an order on the petition includes all the cases circulating between the parties and the judgments issued therein and the orders previously issued between them, so that the competent judge is aware of the absence of previously issued substantive judgments in the same subject matter of the application seen before him/her, and in the case of a presence of a previous order, he/she is obliged to reason the order before him/her, in accordance with Article No. (59/2) of the regulation of the Civil Procedure Law.

**Fourth:** In order to avoid submitting applications for orders on petitions in several different courts at the same tandem time, we suggest recommending the issuance of a decision -not to register any petition electronically- in matters of personal status- in other than the domicile or

place of residence of the applicant.

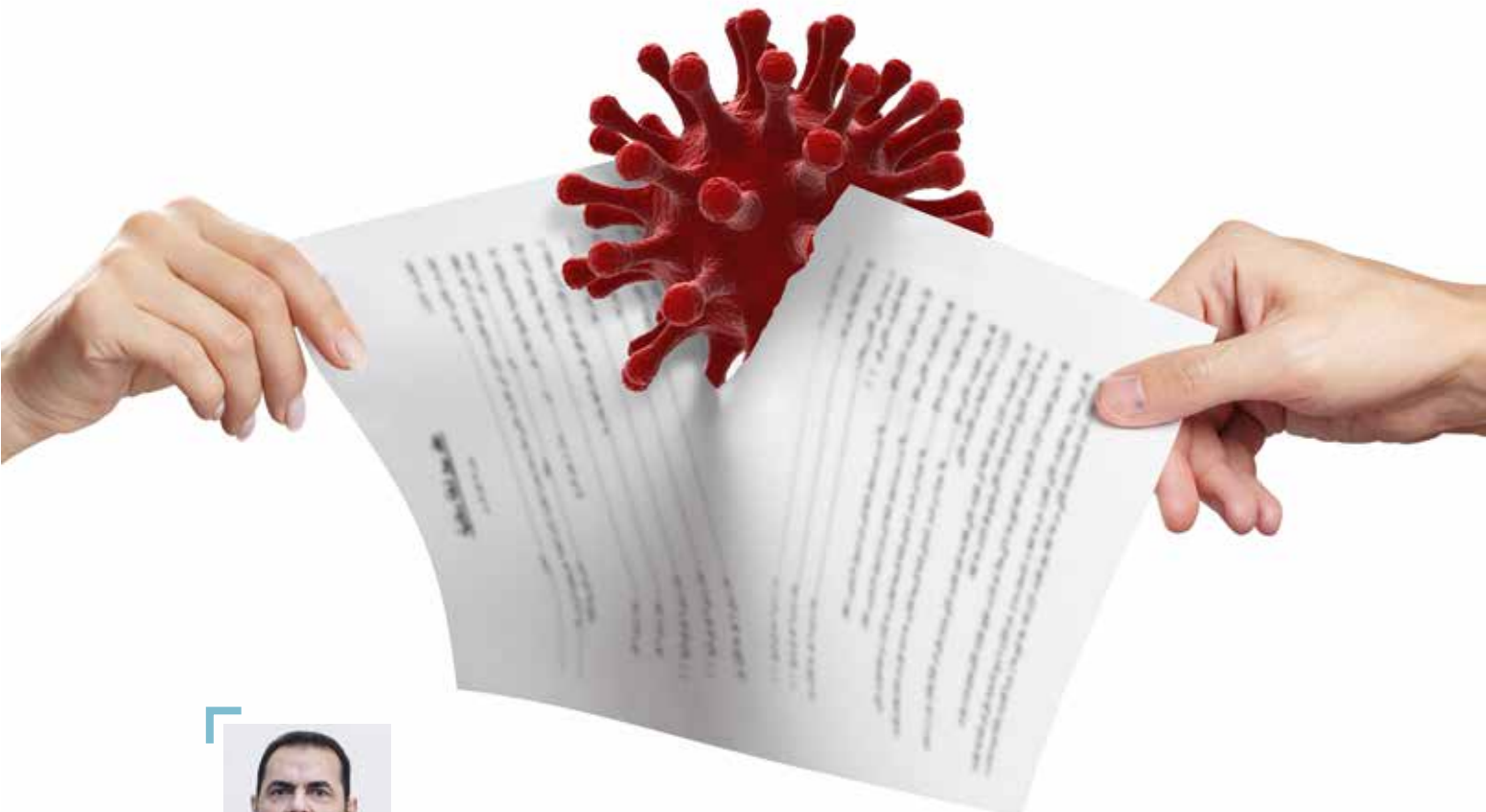
**Fifth:** In cases of submitting a petition to the judge competent to consider the substantive case in the hearings over which he/she presides, we recommend that the competent judges take a decision in it within the time specified in Article No. (59/2) of the regulation of the Civil Procedure Law, which is the day following its submission at the latest.

In the case of a complaint submitted against the decision issued in the order on a petition to the court hearing the substantive case, we recommend to the judges that which was stipulated in Article No. (60/1) of the regulation of the Civil Procedure Law that states, quote "[t]he hearing of the complaint shall not prevent the original case before the court", unquote.

**Sixth:** We recommend that, in the event of a substantive dispute before the Court of Appeal, the authority to issue orders on petitions related to this dispute be vested in the President of the body hearing the appeal.

**//**  
**A Recommendation to the Judges That They Make a Decision on a Petition Filed the Day After its Submission at the Latest**

# The Impact of Coronavirus on Contractual Obligations in UAE Law



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The whole world was affected by the spread of the Covid-19 Virus, known as the novel Corona, and many precautionary measures were taken to reduce its spread, and trade stopped in most parts of the world, and studies were suspended in schools and universities, and students and faculty members were prevented from attending schools and universities, and several services were suspended and many commercial activities were closed except for food and health, and this had a direct impact on contractual obligations in contracts concluded before the onset of the Pandemic, raising several questions about the fate of those obligations.

Since the general principle of the UAE Law is that Consent Makes the Law (Pacta Sunt Servanda), It is not permissible for one of the contracting parties to retract, amend or rescind the contract except with the agreement of the two parties or for reasons established by law. Based on that, it is prohibited for one of the contractors to modify the terms of the contract out of his/her own volition. However, the amendment is valid if the other party expressly or implicitly agrees with it (1). Nevertheless, this principle is subject to some exceptions, such as in the cases of Force Majeure and Emergency Circumstances, and both of which occur unexpectedly during the contract and are impossible to push back against, prevent or fend off their effects.

## Is Coronavirus a Force Majeure or Emergency Circumstance?

Force majeure is an event that a person cannot prevent or fend off its effects, and a sudden accident is an event that a person cannot foresee (2). Therefore, it can be said that force majeure or sudden event is an unexpected event that happens outside the will of Man and cannot be prevented. Examples of force majeure or sudden event are the occurrence of an earthquake or flood.

Force Majeure is an emergency event, unexpected; difficult to control, and makes the implementation of the obligation impossible, so much so it -almost- paralyzes the public life of people (3). Force Majeure requires for it not to be expected but to occur suddenly, out of the blue, even if it had previous signs such as skirmishes before the war, and the media frenzy from which people expect the war to occur.

It also requires the inability to confront such a force majeure, and to push it away, such as the tsunami floods, where the Government of Indonesia did not have the capacity to respond to the devastating speed of the floods. It also requires to be general, by which everyone is affected, and not specific to a particular person, such as when a merchant ship sinks at sea.

Perhaps the Judgment issued by the French Colmar Court of Appeal, on (12) March (2020); which

decided that the measures taken by the French Government following the advent of the Corona Pandemic are considered as a Force Majeure, and although the judgment was not issued in a dispute related to international trade, it is considered the first judgment in France that "Qualified" the Covid-19 Pandemic as a Force Majeure (4).

As for the Theory of Emergency Circumstances, it is an emergency event, unexpected, that renders the contractual, functional and labor obligations of people very burdensome but not impossible, and the conditions of emergency circumstances are very similar to those of the force majeure, in that they are not expected but occur suddenly, and that they are caused by a foreign element (External Reason), where the state does not have any hand in their occurrence, and that they are general in their happening, from which everyone is affected, and not specific to a particular person, such as the collapse of a merchant's building, yet, they differ from force majeure in that emergency circumstances do not make public life impossible, but people can carry on with their lives but with immense difficulty. Some scholars believe (5) that force majeure is different from emergency circumstances in terms of scope and legal effects. In terms of scope, force majeure often occurs in part of the country and not the whole country, but in emergency circumstances, they are often general covering a large area of the country, such as the current Coronavirus, which is spread throughout the world, and not in specific areas. In terms of legal effects, in force majeure, the implementation of the legal obligation is impossible, and contracts are supposed to be abrogated, and obligations cancelled; whereas in emergency circumstances, and although the obligation becomes burdensome in its implementation, still, it is necessary to be implemented (6), as it is the case these days.

From all of the above, the difference between force majeure and emergency circumstances is that in the case of force majeure the execution of the obligation becomes impossible; while in emergency circumstances the execution of the obligation is not impossible but burdensome and causes unusually heavy loss.

// Force Majeure is an Emergency Event, Difficult to Control, and Makes the Implementation of the Obligation Impossible

// Emergency Circumstances Make People's Contractual, Functional and Labor Obligations Very Burdensome but Not Impossible



**In Case of Force Majeure, the Obligation Lapses and the Contract Expires, and in Cases of Emergency, the Parties Agree to Amend the Contract or the Injured Party Resorts to the Courts to Adjust the Burdensome Obligation to an Extent That is Reasonable**

**A Foreign Cause is an Incident that Negates the Causal Relationship Between the Defendant's Act and the Harm Caused to the Plaintiff**

**Law's Rule on Force Majeure and Emergency Circumstances:**

The rule of the law is different in both cases: In force majeure, the obligation lapses and the contract is terminated and the contractors return to the state in which they were before the contract was concluded. In emergency circumstances, either the parties agree to amending the contract or the injured party resorts to the courts to adjust the burdensome obligation to an extent that is reasonable. This applies to all contracts in general. So, it is necessary to examine the facts of each case separately, to find out whether the implementation of the contractual obligation is impossible or not impossible, but it is burdensome and entails a huge loss, because of the difference in the rule of law in both cases. Accordingly, we see that the Corona virus is an emergency circumstance and not a force majeure, as the implementation of the obligation has become stressful and causing heavy loss but is not impossible.

**First: Foreign Cause "Such as Force Majeure or Sudden Accident":**

The UAE Legislator stated in Article No. (273) of the Civil Transactions Law that, quote: "1. [i]n bilateral contracts, if a force majeure arises that makes the performance of the obligation impossible, the corresponding obligation shall, be extinguished and the contract ipso facto rescinded. 2. If the impossibility is partial, the consideration for the impossible part shall be extinguished. This shall also apply on the provisional impossibility in continuous contracts. In both instances the creditor may rescind the contract provided the debtor has knowledge thereof", unquote. In implementation of that, the Court of Cassation in Dubai ruled that it is required for Force Majeure in its legal concept to be the result of an incident that is unexpected to occur at the time of the contract and impossible to be prevented, and cannot be fended off nor its effects can be headed off, and that the unexpected incident is what is not in the minds of the contractors, as in it could not be expected at the time of the conclusion of the contract. The criterion for estimating this

is an objective standard based on the ordinary person principle, which falls within the scope of the discretionary authority of the trial court, when it establishes its judgment on justifiable reasons derived from what has a fixed origin in the papers, and if force majeure is proven, then according to Article No. (273) of the Civil Transactions Law, the obligation expires in total and does not entail compensation for the damage resulting from its non-implementation, with the effect that the force majeure does not result in the postponement of the implementation of the contract or the extension of the completion period, but rather the expiry of the contract all together (7). Article No. (287) of the same Law provides that, quote: "[i]n the absence of a provision in the law or an agreement to the contrary, a person is not liable for reparation if he proves that the prejudice resulted from a cause beyond his control such as a heavenly blight, unforeseen circumstances, force majeure, the fault of others or of the victim", unquote.

The Dubai Court of Cassation ruled in this regard that the provision in Article No. (287) of the Civil Transactions Law indicates that the foreign cause by which the debtor's obligation in contractual liability lapses and the causal relationship between the fault and the damage in contractual liability ceases to exist, may be a sudden accident, force majeure, the fault of the injured or other party, and in this foreign cause there is the impossibility of foreseeability and the impossibility of prevention and that it would make the implementation of the obligation impossible. So the fault of the creditor or the injured is not considered as a foreign cause unless these conditions are met. The court also ruled that the contractual liability is achieved by the availability of three pillars, namely fault and damage and the establishment of a causal relationship between the fault and the damage, and it falls on the creditor the proving of the debtor's fault for failure to perform its obligations arising out of the contract and proving the damage caused. Causation is presumed, in the sense that the debtor can only eliminate its liability if it proves that the damage is due to



force majeure, sudden accident, creditor's fault, or the act of third parties (8).

**The Concept of Foreign Cause:**

Based on the foregoing, we can define the Foreign Cause as: An incident that negates the causal relationship between the defendant's act and the damage suffered by the plaintiff, and must be the result of an accident that is not expected to take place at the time of the contract and is impossible to be prevented (Cannot be fended off nor its affects can be headed off), and the unexpected incident is what is not in the contractors' mind, as in it could not have been able to be foreseen (9) at the conclusion of the contract. And falls under the foreign cause force majeure, sudden accident, creditor's fault and the act of others. Thus, force majeure and sudden incident do not differ in the conditions that must be met in order to be considered as a foreign cause that eliminates liability for damage and negates the causal relationship between the defendant's act and the damage suffered by the plaintiff.

**Second: Exceptional or Emergency Incidents "Emergency Circumstances":**

The UAE Legislator mentioned exceptional incidents in Article No. (249) of the Civil Transactions Law, which stipulated that, quote: "[i]f public exceptional unpredictable circumstances shall

arise, and their happening has resulted in making the execution of the contracted obligation, if not impossible, has become burdensome to the debtor in such a manner as to threatening him with heavy loss, the judge may, according to circumstances and by comparing the interests of both parties, reduce the burdensome obligation to reasonable limits, if justice so requires. Any agreement to the contrary is void", unquote. Pursuant to this provision, the Court of Cassation has ruled that it is the responsibility of the claimer to establish the existence of the conditions of general exceptional incidents, in accordance with Article No. (249) of the Civil Transactions Law, and that it is the duty of the trial court to determine whether or not these conditions are met when it bases its case on reasons sufficient to confirm the existence of such conditions and that it is not permissible to just simply point out to the statement that says that the global financial crisis is considered as one of the general exceptional incidents known to all, and requires the enforcement of their legal effects on mutual contractual obligations between the two contractors. Therefore, exceptional or emergency events can be defined as: "Those events which are general and could not have been foreseen and whose occurrence resulted in the performance of the contractual obligation, although not impossible, but becoming burdensome to the debtor and threatening him/her with a heavy loss".

**Exceptional Accidents Result in the Execution of the Contractual Obligation, Although Not Impossible, but it Has Become Burdensome for the Debtor, Threatening him/her with a Heavy Loss**



After Weighing the Interests of the Parties, the Judge May Return the Burdensome Obligation to an Extent that is Reasonable by Applying the Theory of Emergency Circumstances to the Coronavirus

**Emergency Circumstances Conditions:**

The conditions that must be met in Exceptional Accidents or Emergency Circumstances are:  
 1-That the accident be general, then there is no implementation of this theory in the event that this incident represents an individual, non-general case affecting a particular person or a specific project. That is why the debtor cannot demand that the contract be amended because of his/her illness or the burning of his/her assets, in accordance with the theory of emergency circumstances. However, it is not necessary to consider the incident as public that all members of society must be affected by it, but it is sufficient that members of society belonging to a particular region or city are impacted by it.  
 2-That the accident be exceptional and unexpected, and be unusual and unfamiliar.  
 Therefore, an earthquake in its origin is an unusual and exceptional event, if it occurs in an area that is not normally known of it, while it is not considered an exceptional event if it occurs in an area that used to be known for it. And this is not the only

criterion; where not only does the occurrence of the incident need to be unusual, but also it is required that the gravity of the incident, in which it occurred, be unusual.

3-In addition, the accident must be unforeseen by the standard of the ordinary man, where it is not enough that the contractor himself/herself did not foresee the emergency, but that the common man must not be able to foresee it.

**How Can We Distinguish Between Emergency Circumstances and Force Majeure?**

The most important thing that distinguishes emergency circumstances from force majeure or sudden event in terms of the conditions to be met is that force majeure or sudden event entails that the execution of the obligation is impossible, whether in whole, in part or temporarily, but the emergency circumstances suffice that the incident has made the execution of the obligation burdensome or threatens the debtor with heavy loss. This means that the impact of the emergency event should not be limited to the debtor's obligation becoming costlier, as it threatens him/her with loss, but not a severe one. On the other hand, the impact of the emergency accident should not reach such an extent that it becomes a force majeure that would make the debtor's obligation impossible, because the impossibility of implementation leads to the expiration of the obligation and there would be then no place for amending the contract.

**Effect of the Realization of the Extraordinary or Emergency Event "Emergency Circumstances":**

In contracts binding on both sides, an emergency incident is considered a reason to amend the contract, so that the obligation would not become burdensome to the debtor, who has the right to request a modification of the contract to mitigate the impact of the emergency incident on him/her and not to make his/her obligation burdensome to him/her, and therefore would not threaten him/her with a heavy loss. The Judge, after balancing the interests of both parties and verifying the availability of the conditions for amending the contract due to the emergency incident, may adjust the burdensome

obligation to a reasonable extent by applying the Theory of Emergency Circumstances to the Coronavirus.

**Impact of Coronavirus on Contractual Obligations in UAE Law:**

From reading the texts of the UAE Law and the rulings of its judges, we find that the UAE Legislator has set the Foreign Cause as an umbrella for Force Majeure, Sudden Accident, Creditor's Fault and the Act of Others, which is stated in the text of Article No. (273) of the UAE Transactions Law (10), in addition to what Article No. (249) called as General Exceptional Incidents. There are many contractual obligations arising from contracts concluded before the Corona Pandemic and the above applies to them in detail. If the implementation of the obligation is impossible because of Corona, it amounts to force majeure, with which the obligation lapses and the contract expires. If the performance of the obligation is possible but burdensome and portends a heavy loss due to Corona, it is an emergency circumstance, and the contractor may resort to the court to amend the burdensome obligation to an extent that is reasonable.

**In conclusion...Legal Recommendations:**

The issue of the spread of the Corona Virus and its impact on contractual relations should not be considered according to a general rule, but each contract must be considered separately, in terms of the ramifications of the Pandemic on the implementation of the obligations contained therein, that is, consider each case individually. There is no room for force majeure or sudden incident in general to apply to all cases, and what applies to one case may not apply to the other, while the conditions of force majeure may be available in a particular case, the conditions of emergency conditions may be available in another, or cases in which none of these situations are available. Therefore, even if the Pandemic diminishes and trade returns to normal, I recommend that contractors include force majeure provisions and emergency circumstances in their future contracts, in their applicable and clear formulations and take into thorough account the possibility of a new outbreak of

the Pandemic, with the event giving rise to force majeure or an emergency circumstance becoming as something that is expected by the contractors in the future and thus being unable to use it as an excuse or to invoke the Pandemic to relieve themselves of their obligations. I also recommend that the parties to trade contracts, whose implementation has been affected by the Corona Pandemic, to renegotiate to reach alternative contractual terms to reach acceptable and fair provisions with which all parties are satisfied. It goes without saying to recall the principle rule "La Darar Wa La Dirar" (There Should Be Neither Harming (Darar) Nor Reciprocating Harm (Dirar)); and everyone must rise to the occasion and join hands to lift the effects of the Pandemic by mutual consent and co-operation.

**\* Margins**

- (1) Appeal No. (140/2019) Labor, Session Dated (14) January (2020).
- (2) Dr. Mohsen Abdel Hamid Al-Bayh, AL-Nathareiah AL-A'ammah Lil-Eltizam (The General Theory of Commitment), Sources of Commitment, Page No. (88).
- (3) Dr. AL-Sanhouri: AL-Waseet (The Volume), Part II, op. cit. Page No. (540).
- (4) . Cour d appel de colmar- 6e ch- 12 mars 2020- n 20-01098.
- (5) Dr. Ahmed Hishmat Abu-State, Nathareiat AL-Iltizam Fi AL-Qanoon AL-Madani AL-Jadeed (The Theory of Commitment in the New Civil Law), Book I, Sources of Commitment, Second Edition, Egypt Press, Egyptian Joint Stock Company, (1954), Page No. (363).
- (6) Dr. Saad Ali Ahmed Ramadan, AL-Masadir AL-Iradeiah Ghair Lil-Iltizam Wifqun Li Qanoon AL-Moa'amalat AL-Madeniah AL-Imarati Wa Ahkam Mahkamatai Tamyeez Dubai Wa AL-Ittihadeiah AL-Uliah (Voluntary Sources Besides Those Sources to Commitment, in Accordance with the UAE Civil Transactions Law and the Rulings of the Dubai Casation and Federal Supreme Courts), Afaq Library for Publication, (2021), Page No. (78).
- (7) Appeals Nos. (253) and (288) for the Year of (2009) Civil - Session Dated (10) January (2010).
- (8) Appeal No. (57) of (2008), Commercial, Session Dated (19) January (2009).
- (9) Dr. Fathi Abdul Rahim Abdullah, AL-Wajeez Fi AL-Nathareiah AL-A'ammuh Lil-Iltizamat (Brief in the General Theory of Commitment), op. cit. Page No. (59).
- (10) Act No. (5) of (1985) on the Promulgation of the Civil Transactions Act.

The Need for Contractors to Include Force Majeure and Emergency Circumstances Provisions in Their Future Contracts in Their Applicable and Clear Form



# H. E. Judge Jamal Al-Jabri

## March Full of Creative Initiatives to Develop the Judicial Work



His Excellency Judge Jamal Al-Jabri, President of the Labor Court of First Instance in Dubai, has contributed since his assumption of the Presidency of the Court to bring about changes that have achieved a qualitative leap in the field of labor justice; which led to the streamlining of litigation procedures on workers and contributed to increasing the speed of the settlement of labor disputes, and achieving a high rate of settlements. Judge Al-Jabri worked on the adoption and launching of several creative and innovative initiatives in the field of smart services, most notably of which the initiative of “Virtual Litigation” for the Electronic Disposition of Labor Claims, which is a milestone in the work of the Dubai Courts.

### Military Volunteering ... Rich Experience at the Beginning of Youth

I grew up in Al-Hamriyah Area in Dubai's Deira, where I lived my childhood and youth. I started my educational path from the Religious Institute for Basic Education in Al-Baraha Area, then moved to the Secondary Religious Institute for High School, in Al-Mamzar Area and graduated in (1990) from High School, then joined the National Service as a volunteer in the Armed Forces in Al-Aweer Area and then enrolled in a specialized military course during the Kuwait Liberation War.

I studied at the Faculty of Sharia and Law at the United Arab Emirates University, and despite some difficulties that I encountered at the beginning, but with God's grace and sheer willpower, I was able to move forward in the path of the college graduating in (1996), as part of a distinguished class graduation of those who have held prestigious positions in the UAE Judiciary.







## Practical Experience in French Courts

**“I Trained on the Hands of the Senior of Judges, Gained and Learned a Great Deal from Their Experience and Knowledge**

My professional career started from Dubai Courts when I joined them as a Notary Public, but it didn't take long for me to be in that job; where after eight months, I joined the Judicial Institute in Dubai and graduated with a Higher Diploma in Judicial Sciences, after two years of combining the theoretical and the practical of studies, where I gained practical experience in French Courts with their long history in law, which constituted a qualitative leap in my career path.

I started my professional career after graduating from the Judicial Institute, where I was appointed as a Public Prosecutor in (2003), and then moved after two years to work in the Dubai Courts, which I consider myself blessed to be one of its judges. I was trained on the hands of senior judges, gained and learned a great deal of their experience and knowledge, and then moved within the Courts of First Instance to practice multiple functions in the Labor and Penal Courts.

Then I moved to the Court of Appeal and spent seven years as President of the Fourth Commercial Department until (2016), when I was nominated to the Presidency of the First Instance Labor Court, where I continue to practice my work to date.

These achievements were only the result of an illustrious career spanning more than twenty years, and special personal skills that distinguished him, and it was an opportunity for Sada AL-Mahakim Magazine to shed light on them through this rich dialogue:

### What Are Your Most Important Responsibilities in Your Current Position as President of the Labor Court?

-The Labor Court of First Instance is one of the specialized courts, under the Presidency of the Court of First Instance to hear Labor Claims, in accordance with the Labor Law of (1980) and the UAE Domestic Labor Law issued in (2017). The Presidency of the Labor Court includes technical and administrative tasks, as well as the largest workload in the reception of cases within the Dubai Courts. My duties as President of the Labor Court include managing all judicial and administrative processes, working to achieve all judicial indicators and exceed the targeted rates, supervising the work of judges, in addition to adjudicating cases, where the court receives about (15) thousand cases annually. Since my assumption of the Presidency of the Labor Court of First Instance, I have endeavored to involve all judges and administrators in the court in presenting proposals that are suitable for the development of mechanisms and procedures for the judicial work.

### What Are the Most Important Awards and Honors You Have Received During Your Professional and Scientific Career?

-I was honored by the Cabinet Office for my contribution to winning the challenge of Government Accelerators, in the initiative of resolving labor disputes, by reducing the period of adjudication of Labor Claims that are referred to the Judiciary from (57) days to (26) days. In addition to winning the Bunat AL-Madeenah “City Makers” Cup, within the Hamdan Bin Mohammed Award for Smart Government (2016), and I was also honored by several bodies, most notably the Ministry of Human

Resources and Emiratization, Abu Dhabi Judicial Department, Emirates Intellectual Property Association, Judicial Institutes and others.

### Quality Initiatives and Creative Ideas that Do Workers Justice and Save Time.

#### What Updates Have Been Made During Your Presidency of the Labor Court?

-Since I took my first steps at the Labor Court in (2016), I have studied the status of the Court to see and build on the achievements of our former colleagues, and then held ongoing meetings with the Court's staff and key partners, to arrive at a crystallization of the judicial work. This period has witnessed legislative developments in the procedural law and the bylaw, where the quorum for appeals has changed, so that cases not exceeding (50) thousand dirhams have become unappealable. And in line with these legislative developments, the Labor Court has launched the initiative of “Provisions in Force”, where it has established Special Departments to consider these cases, and allocated distinguished judges to decide on them in a single stage as non-appealable cases, and this initiative has had great results in speeding up work procedures in the Court and reducing the burden on judges and workers alike. The Labor Court also launched the “No'ilin A'ankum (We Announce on Your Behalf) Initiative”, in which the Court took care of the costs of advertising cases in co-operation with a local newspaper, to ease the burden on groups unable to shoulder the costs of advertising, as (2500) free ads were completed in the first year of the initiative alone.

#### What Are the Strategies of the Labor Court to Accelerate the Adjudication of Labor Claims and Cases? And How Aligned Are They with Dubai Vision (2020)?

-The Labor Court of First Instance in Dubai worked to achieve the Vision of Dubai (2021) to be the happiest city in (2020) by achieving the goal of the First Humanitarian City in pre-



serving and caring for workers' rights.

The Labor Court also contributed to the achievement of the Indicators of the National Agenda of the UAE Vision by participating in the challenge of Government Accelerators through the initiative “Resolving Labor Disputes”, which reduced the period of adjudication of Labor Cases that are referred to the Judiciary from (57) days to (26) days.

The Labor Court in Dubai won the “City Makers” Cup within the Hamdan Bin Mohammed Smart Government Award (2016), as a result of achieving a set of accomplishments, which included increasing the rates of reconciliation and settlements, training all workers in the Emirate of Dubai, reducing the duration of adjudication in labor suits, reducing the duration of litigation in simple cases from (58) days to (30) days, facilitating advertising procedures, in addition to the remote registration of cases, converting all services and labor applications into smart applications and printing the fees manual, where (500) manuals were printed and distributed to the relevant bodies.

#### Are There Initiatives Launched by the Labor Court Within the Scope of its Social Responsibility?”

-The Labor Court launched the initiative “Aoun” (Assistance) “ in co-operation with the Experts Section of the Courts, in which it con-

**“ Initiative “No'ilin A'ankum (We Announce on Your Behalf) Initiative”: Reducing the Burden on Groups Unable to Pay for Advertising's Costs**





### Fast Adjudication of Labor Claims and Protecting the Society

#### Why Did You Describe as a “Ticking Time Bomb” a Laid-off Worker?” What Are the Consequences of the Separation of the Worker on the Economy and Society?

-The most important responsibility of the Labor Court of First Instance is to decide quickly on cases involving a dismissed worker, and to find appropriate settlements, because he/she can pose a great danger to society, as he/she can carry out criminal acts to secure his/her needs. Therefore, the faster we decide on labor cases, so that the worker obtains his/her full rights, the more protected the society becomes.

#### Reconciliation is the Master of Judgments

#### What Are the Achievements of the Labor Court in the Field of Settlements and Conciliation?

-The Labor Court in Dubai seeks to expand settlements and conciliation through various initiatives in this field, most notably the initiative “Proactive Settlements” between the parties to labor disputes with the competent authorities to receive complaints represented by the Ministry of Human Resources and Emiratization, the Standing Committee for Labor Affairs, and the General Directorate of Residency and Foreigners Affairs, where the Court was able to grant early settlement agreements binding legal force, through a clear version of the agreement signed by the parties, and sent directly from the complaint-receiving party via an electronic program to the competent Judge of the Labor Court for ratification, and then becomes as legally binding as an issued judicial ruling. This step will solve major problems, including the time wasted in negotiation, and the stages of litigation that may last two years in some cases from, the Court of First Instance up to the Court of Cassation, but now once the agreement is signed, the committed party can go directly to the Court of Enforcement if the other

tracted experts to provide their services free of charge to workers who cannot afford the costs of the expert retainer, in cases that are less than (100) thousand dirhams and the Expert Retainer is estimated at (3000) dirhams.

The Court co-operated with lawyers to reduce costs for financially-distressed workers through the “Sanad” (Back up) initiative, where the lawyer takes over the case completely and free of charge (Pro Bono Publico), and pleads for workers unable to pay the lawyer’s fees, especially in class action suits.

A number of creative and innovative initiatives have been implemented in the Courts of Dubai within the initiative of the Creators Club, the most prominent of which is the following:

“Mobile Labor Court”, “Model Regulation”, “Amicable Execution”, “Uniform Lawsuit Regulation”, through the preparation of a template of the lawsuit sheet, and “Electronic Referral Route Design”.

The Labor Court also participated in the proposal to establish a specialized training and education institute in Dubai to educate workers about their rights as part of the initiatives of “City Makers”.

“ The Labor Court Launched the “Aoun” (Assistance) Initiative in Co-operation with the Experts Section of the Courts, in which it Contracted Experts to Provide Their Services Free of Charge (Pro Bono Publico) to Workers Who Cannot Afford the Costs of Expert Retainer



### A New Building for the Labor Court Equipped with the Latest Technology and Equipment

First I would like to thank His Highness Sheikh Mohamed Bin Rashid Al-Maktoum for the great attention he attaches to the Labor Court of First Instance, and the great keenness of the Leadership in the United Arab Emirates to safeguard the rights of workers; which was

manifested by the allocation of a special building for them equipped with the latest technologies and equipment, and certainly, these high technologies included in the building immensely helped to organize our work, streamline and facilitate procedures for workers.

party violates the agreement. In (2020), we have reached (12%) of the cases that have been concluded through settlement, and we aspire to achieve more settlements and increase the percentage in the coming years. The Labor Court launched another initiative called “AL-Tasamuh” (Tolerance) Initiative, where any case registered with less than (20) thousand dirhams in value is presented to an administrative team trying to reach settlements with the concerned parties before reaching the judge, and we have reached in one month (100) settlements that were resolved by the administrative team and presented to the judge to end the case, and I expect that we will achieve in the field of reconciliation and settlements high rates in the coming years, God willing.

#### How Does the Labor Court Deal with Collective Complaints Filed by Workers?

-The Labor Court is in constant contact with the Ministry of Human Resources and Emi-

ratization to find solutions to collective complaints, where a ministerial decision was issued, in accordance with the Labor Law, to form a committee to adjudicate labor cases involving more than (100) workers, so that the ministry issues its decision directly in the case and then it is referred to the court, which saved us from receiving large numbers of reviewers. There is also a special department within the Labor Court to look into the complaints of workers who number more than (20) workers, and If we consider that one worker is a “Ticking Time Bomb”, now imagine what (20) workers will constitute! We are always striving to find solutions to these problems in co-operation with our partners, the Ministry of Human Resources and Emiratization, the General Directorate of Residency and Foreigners Affairs and the Permanent Committee for Labor Affairs in Dubai. We seek that any decisions issued on this matter be the results of the exerted efforts of an integrated team.

“ In (2020), We Reached (12%) of the Cases that were Concluded Through Settlement



## Distinctive Footprint In the Memory of my Professional History

One of the most important situations I was touched by was the moment I took the oath before His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, where I was moved by his generous person and my meeting with him motivated me to offer the best in my work for the development of the Labor Court and the Courts of Dubai.

### Remote Litigation:

**The Experience of Remote Litigation Must Have Carried Several Positive and Negative Aspects. What Are the Most Prominent Positives Involved and What Are the Negatives That You Aspire to Avoid?**

-Remote Litigation is a milestone in the work of Dubai Courts, where a judicial, technical and administrative team met after the changes of the Covid-19 Pandemic, and the Courts began to move to remote litigation shortly, but the Labor Courts of First Instance had its own specificity due to the nature of its clients, namely simple workers. Still, we won the challenge and the Al-Adheed Centers helped workers to use the remote litigation application, thus avoiding the most prominent difficulties that we faced from the get-go, so much so Dubai Courts recorded a great success in moving to the stage of remote litigation.

**How Do You Assess the Accuracy of Judgments Resulting from Remote Litigation?**

-The Labor Court in Dubai relies on a special measure to ascertain the accuracy of judgments; which is through "Rasid" (Monitor) Program; which monitors the judgments that are cancelled by the Court of Appeal or the Court of Cassation, and on the basis of which the accuracy of judgments is measured, and any

judgment that is repealed must be reviewed by the judge, to find out the reason for its cancellation.

In the Court, we review all statistics on canceled judgments and delayed judgments and monitor the work of the departments and the percentage of adjudication of each judge and the rate of accuracy of judgments to ensure their precision.

**What Are the Latest Developments in the Program of Developing Judgments Remotely Through the Utilization of Artificial Intelligence in Issuing Sentences? And How Does this Reflect on the Accuracy of Judgments?**

-The Labor Court in Dubai is working on the preparation of a program that works according to Artificial Intelligence, where the Program is provided with certain data for similar cases, and on the basis of which the judgment is issued. The activation of this program will be a qualitative leap in our work, because it will go to the heart of the judge's work in issuing judgments.

**Dubai Courts Launched the First Smart Court in the Middle East to Hear Labor Cases with Virtual Reality Technologies. What Are the Duties of this Court and What Services Will It Provide to Workers?**

-Dubai Courts have been keen to make the efficiency of the judicial system at the fore-



front of priorities and targets by harnessing modern technologies and applying the principles of looking into the future. Within this framework, and in co-operation with Jebel Ali Free Zone (Jafza), Dubai Courts launched the "Smart Court" with virtual reality technologies, to consider and decide labor cases and issues for companies registered in Jebel Ali Free Zone and its employees, and in its business areas, and this comes as a complement to the system of integrated judicial services provided to the parties, to facilitate workers' access to justice and to obtain their rights guaranteed by law, in appreciation of the role of this category, and ensuring comprehensive access to services, in order to achieve justice, and in compliance with the vision of the department "World-Class Leading and Distinguished Courts". This Court uses live broadcast technology for hearings to consider the lawsuits of companies operating in the Jebel Ali Free Zone and its business areas, and has been provided with everything needed for the litigation process, to match the performance of the traditional court at the headquarters of the Dubai Courts, where the link between the labor systems in "Jafza" and the courts, has been secured, ensuring the best levels of live broadcast of the details of the case and listen to the arguments of lawyers and statements of employees and representatives of companies involved in the case.

The services of this Smart Court benefit more than (8500) companies from more than (140) countries, and employ about (130) thousand employees.

**What Future Visions Do You Aspire to Achieve in the Judicial Work in Dubai?**

-At Dubai Courts, we aspire to establish Entrepreneurship at the local, federal, regional and global levels, as Dubai Courts represent the country in the field of international competitiveness in the arena of "Contract Enforcement", and has achieved a prestigious level by being among the top ten at the global level in (2020).

In turn, we seek to develop the Labor Court of First Instance on an ongoing basis, while striving to be accompanied by a constant development of legislation to reach a comprehensive modernization, which will reflect on society with greater well-being and progress.

**Covid-19, Challenges and Achievements.**

**How Did the Dubai Labor Court Respond to the Challenges Posed by the Covid-19 Pandemic?**

-Prior to Covid-19, our infrastructure was ready for digital transformation, thanks to the wise guidance of the Government of Dubai, enabling us to deal seamlessly with the Pandemic

||  
Dubai Courts  
Have Recorded  
Remarkable Success  
in Moving to  
Remote Litigation  
(Virtual Litigation)

||  
Middle East's First  
Smart Court to  
Hear Labor Cases





and maintain business continuity. The Labor Court was also able to deal with Labor Cases, the number of which increased in that period, due to the failure of companies to perform their obligations to employees, as a result of the consequences of the closure and lock down period.

The Court turned the great challenge imposed by the Pandemic into a distinguished achievement, as it was able to achieve the Dubai Paperless Strategy by (100%) during this difficult period, in which I was assigned to head the "Paperless Transformation Committee" in the Courts of Dubai, although it was not easy, but will and hard work do not let anything stand in their way.

The Labor Court carried out a series of humanitarian initiatives that contributed to facilitating procedures during this difficult period and reducing pressure on workers, where, for example, and in co-ordination with the Enforcement Court, food was distributed to families who were affected and workers who lost their jobs.

**How Was the Labor Court's Performance Affected by the Implementation of the Hybrid**

**System, Which Combines In-Court and Remote Work, After the Covid-19 Lockdown?**

-The Labor Court worked to solve the problems encountered during the lockdown, due to the Covid-19 Pandemic, with regard to the subject of proof, such as proof of salary, leave belonging to workers and the terms of the employment contract, for example, which were difficult to prove during the remote investigation, as we used to call witnesses to the Court with precautionary measures and in small numbers, and we were able to overcome this problem through the application of the hybrid system.

**Family Comes First in One's Spare Time**

**Where Does Your Excellency Find Yourself in Your leisure Time? What Are Your Hobbies? Do You Find Time for Them in the Midst of Your Busy Work Agenda?**

-The work of a Judge carries a special character, as he/she continues in his/her work day in and day out, and the judicial work takes up most of his/her time, but I devote my free time to spend it with the family, in addition to

playing football with other judges in the stadium of the Judicial Institute and travel, whether with family or with colleagues, as I have visited most European and Arab Countries. Since I belong to Al-Hamriyah, I have been closely associated with Al-Shabaab Club, "Which was later merged with Al-Ahli Club" and I was one of its most prominent fans, while on the international level I am a fan of the Spanish team Barcelona.

**Can You Introduce Us to Your Excellency's Children? Do You Encourage Them to Specialize in Law? And What Advice Do You Give Them to Achieve Excellence in This or Other Field?**

-None of my children chose to specialize in the legal field, as their choices came different, and I respected their opinion in choosing the appropriate specialization, each according to his/her ability, after advice and dialogue with them, and my advice to them was: that choosing the appropriate specialization will be your starting point to the field of career excellence later on in life.

One of my daughters majored in Account-

ing and is currently working in one of the accounting entities, my son Mohammed is studying at the University of Sharjah, majoring in Information Technology, and I have a daughter studying Industrial Engineering at the University of Sharjah, and a daughter studying Nutrition Science at Zayed University, and my other children are still in the stages of school study.

**In conclusion, What Message Do You Send to Workers in General, and to Workers Who Are Reluctant to Claim Their Rights and to Resort to Justice in Particular?**

-The basic advice is to be familiar with the laws to know their rights and duties, and we in the Labor Court attach special importance to this issue, where we launched the initiative "Khallik Qanooni" (Think Legal) to educate people, in general and work in particular, on and by procedures and laws, where the worker must be aware of the importance of proving his/her right to salary, vacations and overtime hours, since documenting these basic things helps us in the end as legal experts to protect his/her rights and do our duty to the fullest.

**|| We Turned the Challenge into an Achievement**

**|| I Advise Workers to Familiarize Themselves with the Laws to Know Their Rights and Duties**



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# Legal Robots

A Legal Robot is one of the forms of intelligent robots that are equipped with Artificial Intelligence (A.I) Technology, and its uses in the fields of justice and law have been discussed in many seminars and participations on the illustration of the role of modern technology in the future of law making <sup>(1)</sup>, where recently a lot of speculation has been made by scientists, economists and the law on the impact of Technology on the Labor Market <sup>(2)</sup>.



The People's Republic of China is one of the first countries to officially start working with the Robot Technology, and has used it to provide assistance in solving many cases, especially cases of infractions and traffic violations, issuing arrest warrants for criminals, arrest orders and apprehending of the most wanted in some cases <sup>(3)</sup>. And recently appeared in the courtyards what is called -Robot Judge- <sup>(4)</sup>, where the Ministry of Justice in Estonia asked its primary data officials to design the first robot judge using artificial intelligence software to decide on some small claims cases as part of its campaign to make governmental services smarter <sup>(5)</sup> and alongside the robot judge also appeared the Ro-

bot Lawyer <sup>(6)</sup>. Smart Robots will have a big and effective impact in the field of the legal profession, as is the case in the work of the judiciary, and the practice on the ground points to the fact that many of the major offices and law firms resort to them to offer their non-physical legal services and at a lower cost, where they can do some of the functions of lawyers and provide consultation, explanations and quick, simple and affordable legal advice, especially on infractions <sup>(7)</sup>, and some schools of thought in the legal literature <sup>(8)</sup> indicated that applications of artificial intelligence or what is known as Automation can be applied in the scope of the drafting of commercial contracts, while

other schools of thought <sup>(9)</sup> think that it can extend its use to include also the analysis of contracts, review of documents or memos that are provided to the courts or presented in investigations, advise customers in a digital format, creating Databases that are more flexible, and the creation of Smart Documents <sup>(10)</sup>. Finally, there are those who are of the view that <sup>(11)</sup> A.I can be utilized in the field of Legal Research and Drafting of Documents, and to predict the outcome of cases and the disclosure of documents. Today, more than ever, we hear and see how many law firms have become open to the idea of using technology, after lawyers realized that technology is a Massive Enabler to them,

and unless and until they deal with new technology, they will not be connected even to their clients, and the rise in the use of new technology is of concern only to routine lawyers who only provide traditional solutions <sup>(12)</sup> and the question that remains here is: Are the most thoughtful law firms ready to receive and accept the Applications of Artificial Intelligence? <sup>(13)</sup> And what happens when Robots misunderstand or things go awry? This is a question that was raised by some Jurists <sup>(14)</sup> and they tried to answer it by attributing the responsibility for the damage caused by the robot in such cases to the software developers and that is when the resulting damage is due to errors in program-





ming<sup>(15)</sup>, and in consequence of that, IBM and ROSS companies have developed an Artificial Intelligence that is capable of compiling an impressive amount of legal documents to extract the required decisions in record time, where a billion documents were processed per a second<sup>(16)</sup>. We conclude that legal professionals must work hand-in-hand with smart machines to better serve the public, so that it can be said that robots equipped with artificial intelligence applications will not replace judges or lawyers, but rather increase their capabilities, to enforce the law, and make sound decisions, at a faster pace than was the case in the past, where this technology helps them to perform their tasks related to the provision of basic legal services, which can be provided without the need of a presence of a human, while the rest of the higher-ranking tasks, which need human intervention, will still remain outside the scope of smart devices<sup>(17)</sup>.

## \* Margins

- (1) See: «Lawyers and Robots- Conversations Around the Future of the Legal Industry». [https://www.lexisnexis.com.au/\\_\\_data/assets/pdf\\_file/0003/187644/L](https://www.lexisnexis.com.au/__data/assets/pdf_file/0003/187644/L).
- (2) Milan Markovic: «Rise of the Robot Lawyers?», Arizona Law Review [Vol. 61:325- 2019- p .326
- (3) For more on this topic, see the article entitled “Can Artificial Intelligence Replace a Judge in Court?”. Posted on the website. Date of entry 2020-12-20 <https://www.worldgovernmentsummit.org/ar/%D8%A7%D9%84%D8%B1%D8%A7%D8%B5%D8%AF/%D8%A7%D9>.
- (4) For more see the article entitled “South Korea Imposes the World’s First Robot Tax”, published on the following website: <https://al-ain.com/article/south-korea-introduces-worlds-first-robot-tax>.
- (5) See: Can AI Be a Fair Judge in Court? Estonia Think So. Publish 25.03.2019. «Estonia plans to use an artificial intelligence program to decide some small – claims cases, part of a push to make government service smarter». <https://www.wired.com/story/can-ai-be-fair-judge-court-estonia-t>
- (6) Dr. Ahmed Abdulzاهر: “AL-Tareeq Lil-Thaka’a AL-Istina’e Fi A’amal Mihnut AL-Mohamah Aw AL-Mohami AL-Robout” (The Path to Artificial Intelligence in the Work of the Legal Profession or the Robot Lawyer). A remote online seminar organized by the Abu Dhabi Judicial Academy, Published on (2) July (2020) on the Website of the UAE AL-Ro’eyah (Vision) Newspaper, Visit Date (5) June (2020)- <https://www.alroeya.com/173-76/2140750-> and the writer defined the Robot Lawyer, quote: as a “[p]rogram or an electronic application that performs many of the tasks normally carried out by lawyers and that its tasks are limited to reading documents, analyzing contracts, alerting to possible defects and shortcomings, identifying risks, responsibilities and obligations, giving legal arguments based on judicial rulings, drafting arguments previously introduced by the judiciary, and forming hypotheses based on questions and facts entered”, unquote. The writer also noted that it has not yet been possible to date to build a lawyer capable of arguing in courts’ arenas. The writer also stressed that the Robot Lawyer at the moment does not pose a significant threat to the human lawyer, but the future may raise fears about the future of the profession. While we see from our side, that fear is not limited to the legal profession only, but will extend to many other professions and businesses carried out by the natural person, and the anxiety and fear of the uses of intelligent robots equipped with artificial intelligence technologies, is inevitably coming, especially after their spread and increased use in many fields.
- (7) The Law Firm Baker&Hostrtler has announced that it will hire an artificially intelligent robot “Ross”, which is manufactured by IBM, in its bankruptcy case Department, where the artificially intelligent lawyer is designed to read and understand language and form hypotheses when asked questions, in order to generate answers based on sources and references to support its conclusions. Lawyer Ross also reviews all the law books, and returns with answers with references and legislation, and it can cite similar cases, and in addition, it monitors the law around the clock for a review of the new updated decisions. For more on this topic, see the article entitled “Tawtheef Awwul Mohami Robout Fi AL-A’alum” (Hiring the World’s First Robot Lawyer), Published on the website on (18) May (2016), Entry Date (10) October (2020)- <https://arabic.rt.com/news/823774>.
- (8) Charles Kerrigan, Olswang Isabel Parker: «AI in law firms—a game changer in legal practice?», P. 9.«... currently focusing on five main areas: 1. the use of AI for contract analysis 2. The use of technology assisted review «TAR» to conduct document review in a litigation or global investigations context 3. Creation of ‘smart apps’—using expert logic either to create internal efficiencies or to deliver advice to clients in digital format 4. Smart document generation, and 5. Smart knowledge management». [https://www.lexisnexis.com.au/\\_\\_data/assets/pdf\\_file/0003/187644/Lawyers\\_and\\_Robots\\_White\\_paper.pdf](https://www.lexisnexis.com.au/__data/assets/pdf_file/0003/187644/Lawyers_and_Robots_White_paper.pdf).
- (9) Lawyers and Robots? Conversations Around the Future of the Legal Industry. [https://www.lexisnexis.com.au/\\_\\_data/assets/pdf\\_file/0003/187644/La](https://www.lexisnexis.com.au/__data/assets/pdf_file/0003/187644/La)
- (10) The holder of this opinion believes that the creation of intelligent documents will produce a high-quality draft more quickly and accurately, which makes lawyers more accurate when drafting and negotiating. Charles Kerrigan, Olswang Isabel Parker: op, cit, P. 10 «Smart document generation will enable the production of a high quality tailored first draft much more quickly and accurately—meaning lawyers can concentrate on more nuanced drafting and negotiation».
- (11) Milan Markovic: op, cit, p 331.« the ability of intelligent machines to perform core legal tasks, such as document discovery, legal research, document drafting, and the prediction of case outcomes».
- (12) David Halliwell, Masons and Dan Wright: «Planning for the future— law firms and new technology», P. 4, «Unless private practice lawyers start to engage with new technology, they are not going to be relevant even to their clients». [https://www.lexisnexis.com.au/\\_\\_data/assets/pdf\\_file/0003/187644/La](https://www.lexisnexis.com.au/__data/assets/pdf_file/0003/187644/La)
- (13) Charles Kerrigan, Olswang Isabel Parker: op, cit, P.4
- (14) Gary Lea, Roger Brownsword, Kristjana Çaka and Karen Yeung: «What happens when the robots get it wrong?» ,P.19–21 [https://www.lexisnexis.com.au/\\_\\_data/assets/pdf\\_file/0003/187644/L](https://www.lexisnexis.com.au/__data/assets/pdf_file/0003/187644/L)
- (15) Tomas Lozano – Perez: «Robot Programming», Proceedings of the IEEE, Vol. 71, no. 7, July 1983, pp 831. <https://homes.cs.washington.edu/~ztatlock/599z-17sp/papers/robot->
- (16) Thierry Vallat: op, cit, P.4. «Et le monde du droit n’est pas épargné puisque IBM a développé avec ROSS une intelligence artificielle capable de compiler une impressionnante masse de documents juridiques pour en extraire les décisions recherchées en un temps record (1milliard de documents traités par seconde)». <http://www.francesoir.fr/societe-science-tech/intelligence-artificielle->
- (17) Milan Markovic: op, cit, p 328

The Session  
is Adjourned

## An Integrated Package of Legislative Amendments... To keep Pace with the Renaissance and Aspirations of the State

Dubai hosts the World Expo (2020) Event from the (1st) of October of (2021) to the (31st) of March of (2022) and for a period of (128) days. This event is considered the largest international cultural gathering in the world, where people meet in one location, having been separated by the Pandemic, during the months of last year, where it closed airports, stopped flights, paralyzed international tourism and imposed social distancing. This event aims to connect human minds with each other to exchange ideas and inventions, in order to achieve success in creating the future for all countries of the world, as each country displays what represents its culture, arts and technology that it has created, and even distinctive foods that it is known for. At the local level, and according to experts, (24) Economic Sectors will be the most benefited from the global event, whether directly or indirectly, namely, Tourism, Real Estate, Hotels, Travel and Aviation, Exhibition and Events Industry, Retail and Commercial Centers, Technology, Building and Construction, Financial Services, Banking, in addition to Industry Sectors, Hospitality, Restaurants and Entertainment, Logistics, Foreign Investments, Distribution Companies, Professional Services, Transportation, Energy, Entrepreneurship Sector, Small and Medium-Sized Enterprises (SMEs), Governmental Sector Companies and Institutions, Food and Beverages, Exchange and Remittances, Block chain and Cryptocurrencies. And this will lead to an increase in the prosperity of the economy and attract foreign investments and pave the way for the creation of new and unlimited opportunities, and then the birth of new legal relations in various fields and the consequences thereof, on all legal, economic and social levels. This requires the development of legislation to comply with the trends of the state in two respects: The First of which as an Incubator for the values of tolerance, peace, safety and multiculturalism, where it includes more than (200) nationalities, enjoying a decent life, respect, justice and equality, and the rejection of hatred and nationalism, causes of division and difference, and the Second of which as a Suitable Environment for Investment that enables companies or people who own capital and various financial rights to manage their assets more flexibly, through legal tools that contribute to attracting the flow of foreign investment. Therefore, and in a proactive step, the United Arab



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Emirates announced the largest project to develop legislation by issuing His Highness Sheikh Khalifa Bin Zayed Al-Nahyan, President of the United Arab Emirates (May God protect him), an Integrated Package of Laws and their Amendments, to keep pace with the Renaissance and Aspirations of the State, in order to strengthen its economic environment, investment and commercial structure, and preserve the rights of individuals and institutions alike. The Law Package approved by the Head of State included the Development of Laws related to the Investment, Commercial and Industrial Sectors, the Laws of Commercial Companies, and the Regulation and Protection of Industrial Property, Copyright, Trademarks, Commercial Registration, Electronic Transactions and Trust Services, Factoring, the Law on the Entry and Residence of Foreigners and the Law on the Uniform General Rules of Labor, in addition to Laws related to Society and the Security of its Members, such as the Law on Crimes and Penalties, the Law on Combating Rumors and Cybercrime and Combating Narcotic Drugs and Psychotropic Substances. Those amendments were preceded by a period of amendments to other Laws such as the Law of Civil Transactions, Personal Status and Civil Procedures and its Regulatory Bylaw, and all these legislations were a qualitative leap and the Judiciary was the safe umbrella for all, which places on us, the Judges, the responsibility of putting them into practice and upgrading the Judicial System permanently, and seeking to crystallize the Principle (No One is Above the Law); which is the Second of the Eight Principles launched by His Highness Sheikh Mohammed Bin Rashid Al-Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai (May God protect him), for governance and government in Dubai, in the belief that Justice is a guarantee of the stability and prosperity of the nation, and in an implementation of the wise words of God Almighty in the Holy Qur'an, who said, quote: "[a]llah doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things", unquote. (Verse 58 of Surah Al-Nisa) - (Chapter of Women) ... May God Guide All to Do What He Loves and Blesses .... The Session is Adjourned (Until We Meet Again in the Next Edition of Sada AL-Mahakim Magazine).