

The Law Applicable To Alcohol Consumption in the UAE

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Introduction

Since the recent amendments to the Federal Criminal Code last year (Federal Decree By Law No. 15 of 2020), the Union Supreme Court issued a recent judgment (Federal Supreme Court judgment 1308 of 2020) which clarified the position on the use and possession of alcohol. The court in this case provides that if there is a local law of an Emirate that prohibits the consumption of alcohol (and this Emirate has jurisdiction) then this law should apply instead of the Federal Criminal Code. Whilst this judgment was issued by the highest court in the UAE, there is no concept of binding precedent in the UAE (a civil law jurisdiction). As such, it is possible that the above position may change depending on future judgments.

In this article, we discuss a possible interpretation of the amendment made to the Federal Criminal Code in relation to the consumption and possession of alcohol.

Amendments to the Federal Decree By Law No. 15 of 2020

Article 313 (bis) of the Federal Criminal Code was amended pursuant to Law No. 15 of 2020. We outline the changes below:

Provisions under the Federal Criminal Code:

Prior to the amendments, a person consuming alcohol, or possessing, acquiring, importing, exporting or manufacturing alcoholic beverages for personal use or offers to third parties without authorization and as prescribed by law was liable to detention for a period of not less than six months and a minimum fine of ten thousand Dirhams, or either of these two penalties. Likewise, a person possessing, acquiring, bringing, manufacturing, re-exporting, promoting or publicizing alcoholic beverages for trade purposes without authorization and as prescribed by law was liable to detention for a period of not less than two years and a minimum fine of fifty thousand Dirhams, or either of these two penalties.

An English translation of the previous version of Article 313 (bis) of the Federal Criminal Code No. 3 of 1987, which was introduced in 2006, reads, as follows:

Article 313 (bis):

1. *The penalty (Hadd punishment) for drinking alcohol shall not apply to non-Muslims.*
2. *Without prejudice to the conditions allowed, detention for a period of not less than six months and a minimum fine of ten thousand Dirhams, or either of these two penalties, shall be imposed on*

whoever drinks alcohol, or possesses, acquires, imports, exports or manufactures alcoholic beverages for personal use or offer to third parties.

3. *Without prejudice to the conditions allowed, detention for a period of not less than two years and a minimum fine of fifty thousand Dirhams, or either of these two penalties, shall be imposed on whoever possesses, acquires, brings, manufactures, re-exports, promotes or publicizes alcoholic beverages for trade purposes.*

The penalties stipulated in this Article shall not prejudice the penalties stipulated for violation of licences or permits and the conditions thereof.

Provisions under the amended Federal Criminal Code:

Article 313 has undergone a radical change, pursuant to Law No. 15 of 2020. An English translation of Article 313 (bis) of the Amended Code reads as follows:

1. *No penalty shall be imposed on drinking, possessing or trading in alcoholic drinks in the cases and at places authorized in accordance with the legislation in force.*
2. *Without prejudice to the provision of Clause (1) of this Article, each emirate may issue regulations for the use, circulation and possession of alcoholic drinks or trade therein.*
3. *Whoever offers or sells alcoholic drinks to any person under 21 years of age or buys the same for the purpose of offering to such person shall be punished by imprisonment and a fine of no less than one hundred dirhams and not more than five hundred thousand dirhams or any of such penalties. Any of such actions shall not be considered a crime if the perpetrator verifies that the age of the person to which the alcoholic drinks is offered or sold is not less than 21 years, based on his passport or any official document.*

As may be seen, consumption of alcohol is no longer considered a criminal offence as matter of UAE Federal law, provided that certain conditions are met such as consuming it in authorized locations in accordance with the legislations in force, with due consideration to the local laws that each Emirate may issue.

Facts of the Case

The UAE Public Prosecution charged three individuals, among other charges, with consuming alcohol without a license in contravention of the Federal Criminal Code No. 3 of 1987.

The Federal Court of First Instance found the three individuals guilty of the alleged offences.

Upon appeal, the Federal Court of Appeal overturned the judgment in part and ruled that all three individuals were not guilty of any offense in relation to the consumption of alcohol. The Court of Appeal noted that the consumption of alcohol is no longer a crime pursuant to the amended Article 313 (bis) of the Federal Criminal Code.

The Public Prosecution challenged the Court of Appeal's ruling before the Union Supreme Court. The Prosecution argued that the ruling erred by failing to take into account the second paragraph of Article 313 (bis), as amended (see above), which provides that each emirate is to regulate the consumption and use of alcohol and that the emirate of Sharjah had a law in place (since 1972) that criminalizes the consumption of alcohol.

The Union Supreme Court agreed with the Prosecution. It noted that, in applying Article 313 (bis), above, the court must take account of the local laws of each Emirate. In the present case, this required an assessment of the local law of Sharjah which still criminalizes the consumption of alcohol. The Union Supreme Court thus reversed the appeal judgment partially and directed the Appeal Court to review the appeal again.

Commentary

UAE law is comprised of Federal and local laws. Prior to 1987, each emirate applied its own local criminal laws (Law No. 8 of 1976 regarding alcoholic beverages for Abu Dhabi and the Dubai Law No. 1972 for Dubai). In 1987, the Federal Criminal Code was promulgated and is now applied in all Emirates. However, this does not prevent each Emirate from applying its own local criminal laws as long as it is not inconsistent with the Federal Criminal Code or the Federal Criminal Code is silent on an issue covered by local law.

In 1976, the Federal Criminal Code did not have a provision criminalizing the consumption and possession of alcoholic beverages. This was probably due to the existence of another general provision regarding the application of Islamic principles, which included Islamic penalties for the consumption of alcohol. At that time, this was applied. This position changed pursuant to an amendment that occurred in 2006 which added article 313 (bis).

The current position indicates that the legislature wanted to remove the requirement of obtaining a license to consume alcohol, so long as the consumption occurs in situations permitted under the law.

It is important to note that Abu Dhabi (prior to the issuance of the above amendment) cancelled Law No. 8 of 1976. It is also expected that the remaining emirates will cancel or amend its local laws governing the consumption and use of alcohol.

In the absence of a conclusive interpretation of the UAE courts position, further clarity is expected with the issuance of new judgments.

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