

UAE; Application of the law with regard to time and public policy

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Summary

The law itself will usually state by which method the law is to come into force. Laws do not apply retrospectively unless this is stated in the law. The exception is that if the law relates to issues of public policy, then the law will apply retrospectively regardless of whether the law itself states this.

For this purpose, 'law' is defined widely to include orders issued by HH the Ruler of Dubai, whether in the form of a law, decree, or directive (written or verbal), all being equally enforceable as acts of the Ruler who has the power to pass all legislation for the Emirate of Dubai.

The Facts of the Claim

In an action filed before the Dubai courts, the Claimant sought an order for specific performance and requested the courts to confirm the validity of a sale contract involving land in the Shindagha area in Dubai. In 1989, the Claimant paid the purchase price for a plot of land to one of the heirs of the owner of the land (since deceased). The heir had an irrevocable power of attorney on behalf of all the heirs of the deceased owner. Ownership of the land was not formally transferred but simply recorded at the Dubai Notary Public.

In 2000, the Ruler of Dubai issued an order prohibiting the disposition of Shindagha property which prevented the creation and conveyance of title and the attestation of simple contracts between the parties that had not been attested by the Land Department or were not accompanied by an attested title deed. This order was deemed mandatory and related to public policy because it involves property wealth and individual ownership in the Emirate of Dubai. As a result, the order had to be observed and unregistered contracts of sale for land located in Shindagha were considered unenforceable. Following the issuance of this order, compensation from the Land Department (on behalf of the Dubai government) was awarded to the heirs of the deceased owner and not the Claimant. As a result, the Claimant commenced proceedings, claiming that the compensation was his since he had bought the land from the heir before the prohibition came into force.

Summary of Judgment

The Court of Cassation held that it is well established by the courts that in accordance with Article 3 of the UAE Civil Code, provisions relating to the circulation of wealth and rules of individual ownership are part of public policy. Article 3 of the UAE Civil Code provides:

"Public order shall be deemed to include matters relating to personal status such as marriage, inheritance, and lineage and matters relating to systems of government, freedom of trade, the circulation of wealth, rules of individual ownership and the other rules and foundations upon which society is based, in such a

manner as not to conflict with the definitive provisions and fundamental principles of the Islamic sharia.”

As the new order concerned property, it was therefore a matter of public policy and must be applied retrospectively. Consequently, it affected the Claimant and his right to own the land. The transaction between the Claimant and the heir was deemed effective but the conditions for its validity (registration) were not satisfied and as a result the courts considered the contract not properly concluded. The Claimant argued that despite the sale contract not being registered with the Land Department, he was still entitled to the benefits of ownership (i.e. he was entitled to the compensation awarded by the Land Department, not the heir, as he was the true owner). However, the order issued by the Ruler of Dubai specifically stated that customary contracts (unregistered contracts) should not be approved unless approved by the Land Department or a title deed is issued. The Claimant's sale of land located in Shindigha was therefore deemed unenforceable and he was not entitled to the compensation.

Comments

Article 112 of the UAE Constitution provides that “No laws may be applied except from the date they become in force and no retrospective effect shall result in such laws. The law may, however, stipulate the contrary in matters other than criminal matters, if necessity so requires.” It is settled law under the principles of Islamic sharia and general constitutional principles that laws will not have retrospective effect and the effect thereof will not cover past event or things that happened prior to them. That would be contrary to the principles of justice and legality and the need to protect acquired rights. This is also necessary in the public interest in order that the transactions of individuals should have stability. However, there are exceptions to the general rule when issues of public policy are concerned and the Order of 2000 specifically mentioned that it would have retrospective effect. The Order issued in 2000 was intended to apply with retrospective effect to contracts that had not been perfected prior to the Order coming into force. Individuals that entered into transactions (that took place prior to that Order) that had been perfected were entitled to compensation. The Claimant, however, could file a separate action against the heirs of the deceased owner for unjust enrichment.