

The Urgent Case: A Little-Known Tool for Stealthy Contractual Parties in Qatar

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Parties to construction contracts in Qatar are increasingly relying on urgent cases to not only obtain official expert reports documenting the status of the works or project site, but also as a tool to exert pressure on the other party.

Urgent cases are governed by the Civil Procedures Code (Law No. 13 of 1990), which entitles parties in Qatar to file applications for urgent case in Qatar. Filing an application for an urgent case enables a party to obtain an official report from the Court of Urgent Matters in Qatar (“Court”). The official report is prepared by a court-appointed expert (or a team of experts) and documents evidence that the applicant fears may be at imminent risk of disappearing or otherwise becoming unavailable by the time parties commence arbitration or litigation proceedings in respect of their dispute.

Jurisdiction of the Court

The Court of Appeal recognized the Court’s jurisdiction over urgent cases, even where a contract provides for arbitration, in Judgment No. 723+751 of 1995 and Judgment No. 152+155 of 1996. The Court of Appeal holdings have been reinforced time and again by the Court, and the Court will assume jurisdiction over an urgent case even where the contract between the parties requires disputes to be resolved in arbitration.

What is an urgent case?

In filing an urgent case, a party must establish two elements: (i) urgency (i.e. the evidence may soon become unavailable); and (ii) demonstrate that the application does not touch upon the rights of the parties under the contract or law (the merits of the case are not at issue in the filing).

The Court does not issue judgments on the merits of the dispute and lacks the authority to do so. Where an applicant raises substantive issues in its application that relate to the dispute or fails to establish the urgency of the matter, the Court must in principle decline jurisdiction in principle. In practice, however, the Court has been known to not strictly enforce the above-noted criteria.

Procedures of an urgent case

As a first step, a party to a dispute files an application before the Court in which the party names respondent(s) and provides the Court with the official address of the respondent. The Court, upon receipt of the application, will schedule a hearing generally after seven days; prior to the hearing summons will be mailed by the Court to the respondent at the address provided in the application. Service of the summons is deemed procedurally sufficient if the summons is mailed within three days of the scheduled hearing.

At the first scheduled hearing, if the respondent appears, it may argue a defense following which the Court will permit the claimant to respond. The Court will then adjourn the hearing to issue a preliminary judgment either refusing jurisdiction or accepting jurisdiction, appointing an expert or a panel of experts and specifying the scope of the expert’s mandate. Court experts are generally

tasked with meeting with the parties, reviewing documents submitted by the parties, conducting an investigation of the physical premises in question and drafting a report. The expert will carry out the Court's mandate and prepare and submit a report to the Court, which will then be distributed to the parties. The parties may submit their comments to the report to the Court at the next hearing at which point the Court will either ratify the report or return the report to the expert(s) with instructions to amend the report. Upon resubmission by the expert(s) of the amended report, the Court will issue a judgment ratifying the report, and the report will become an official court-issued record of evidence. The report will be an official document and may be used by the parties in future proceedings as persuasive evidence, especially if subsequent proceedings on the merit are commenced in Qatar. In the event the findings favour one party over the other, the party whose position is weakened by the findings would not be precluded from challenging the report in future legal proceedings. In other words, the court-issued official report does not, in and of itself, have a determinative effect on the outcome of future legal proceedings and would only be considered persuasive evidence by a court or arbitration tribunal.

Urgent cases in the context of construction contracts

Parties to construction contracts rely on urgent cases primarily to preserve evidence but also to, as a strategic step, to exert pressure on the other party. In practice, hearings in urgent cases are held on a weekly basis with the first hearing usually being held within a week of the Court accepting jurisdiction; as such, it is not uncommon for a party to a dispute to be caught unaware. Hence an employer, contractor or subcontractor may find itself receiving a summons to appear in an urgent case hearing as respondent the very week that it receives the summons. If the respondent is absent at the first hearing, the Court may still assume jurisdiction over the case and proceed to appoint experts.

Strategically speaking, an urgent case may benefit employers, contractors and subcontractors alike. Filing an urgent case would enable a party that has been barred from entering a worksite to re-enter the worksite with the court-appointed expert to document the status of the work done before another contractor carries out the said work. In situations where works are defective to the extent of posing serious health and safety risks to workers and end users, an employer may file an urgent case to obtain an official court-issued report confirming the risks posed. If the report issued by the Court clearly supports the employer's position and unambiguously acknowledges an urgent situation, then the employer may under very special circumstances rely on the report to evict the contractor and perform the works itself without first obtaining a court order. A contractor may also benefit from filing an application for an urgent case if it is dissatisfied with a subcontractor and wishes to evict the subcontractor from site but wants to have the defective works and the subcontractor's failings officially documented for future claims. Subcontractors have also relied on urgent cases to document the extent of works as well as to document instances of delay where the site is unfit to receive the subcontract works. In some cases, subcontractors have been known to depart from site without completing the contract as soon as they receive the official report.

The scenarios noted above merely provide an overview of instances where filing an urgent case may benefit a party to a construction contract. As noted earlier, having an arbitration clause in the contract does not preclude a party from filing an urgent case, as the right to file such a case is a constitutional right. We advise parties considering urgent cases to consult with legal experts and seek legal advice prior to commencing an urgent case as in certain cases filing an urgent may possibly be detrimental to a party's interest.

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