

## Case Note

# ASSESSING THE LEGAL RAMIFICATIONS OF THE COVID-19 PANDEMIC ON ADMINISTRATIVE CONTRACTS IN THE UNITED ARAB EMIRATES: COMPARATIVE REVIEW

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## ABSTRACT

**Background:** *This study aims to establish whether COVID-19 qualified as a force majeure event or exceptional circumstance according to the laws of the United Arab Emirates (UAE) and assess if a particular principle can circumvent contractual duties. It investigates how COVID-19 impacted administrative contracts in the UAE, using UAE laws and case studies to explore legal theories that justify failure to perform an obligation in such contracts.*

*The UAE, like many other countries, faced an unpredictable event and utilised all its resources and manpower to combat the danger and ensure the safety of its people. This resulted in various restrictions, such as mandatory quarantine for everyone entering the UAE and limitations on travel outside the country. Additionally, certain Emirates within the UAE, such as Abu Dhabi, imposed entry restrictions, requiring a negative COVID-19 test result for entry and later mandating that only vaccinated individuals were permitted to enter.*

*Additionally, the study explores the necessary criteria for demonstrating force majeure or exceptional circumstances in said contracts. This study used an analytical approach to examine laws and court decisions. Based on the findings, the outbreak of COVID-19 did not directly impact administrative contracts in the UAE. This is likely due to the authorities' effective handling of the situation. Notably, the theories of force majeure and exceptional circumstances could not be automatically and generally applied to all contracts because each contract was unique and required individual considerations. The study presents potential theoretical and practical applications, highlighting opportunities for future research.*

The study aims to determine which legal theory, if any, could be applied to COVID-19 - either force majeure or exceptional circumstances. Additionally, it examines whether the UAE government would impose any restrictions on movement and work in anticipation of any future pandemics, taking into account the country's recent years policies, laws, and crisis preparation measures.

**Methods:** This study uses an analytical approach to examine the main theories outlined in the UAE Civil Transaction Law No.30 of 2020 relating to force majeure and exceptional circumstances. These theories could provide relief from contractual obligations if certain criteria are met. The study examines whether COVID-19 qualified for one, both, or none of these theories to relieve the contractor in an administrative contract from their obligations due to the consequences of the pandemic. The study also includes laws and cases from the European Union and the Court of Justice of the European Union, providing a comparative analysis. The purpose is to compare the legal systems of the UAE and the EU, focusing on administrative contracts and decisions made during the COVID-19 pandemic. The study analyses the progress in dealing with the COVID-19 pandemic and the recent federal human resource law amendment. This analysis primarily focuses on UAE laws and cases, utilising a variety of primary sources and secondary resources such as research articles and books.

**Results and conclusions:** The study demonstrated that COVID-19 significantly impacted administrative contracts and decisions globally, particularly in the UAE. However, legal theory can justify deviations from regular protocols due to unforeseeable circumstances. The study aimed to explain these theories with the help of case studies, serving as a guide for future similar events. After careful examination, the study concluded that neither the force majeure theory nor the exceptional circumstances theory applies to all cases. Due to each contract's varying rules and obligations, the court must evaluate each case to determine which theory is applicable, if any.

However, the study recommended establishing well-defined policies to guide individuals and agencies in the future on how to act accordingly without affecting the essence of the administrative contract and to provide temporary relief that allows the obligator to perform their duty. The study suggested that the UAE might not permit force majeure or exceptional circumstances claims in future pandemics due to the advanced progress, new laws, and policies that impressively address the situation.

The study also explored the new federal human resource law, enforced in 2022, governing public employees and the provisions that make remote work an option during emergencies. The fast adaptation to these circumstances indicated increasing legal flexibility, potentially reducing reliance on legal theories for relief from contractual obligations in the future.

It is important to note that the force majeure or exceptional circumstances doctrine may not always apply to contracts performed during a pandemic or future events similar to COVID-19. No official statement from the court or state has clarified the applicability of these doctrines universally or to specific ones. This indicates that to determine whether a relief from a duty can be considered as falling under these theories, the court must examine it thoroughly and decide definitively. Each case was handled individually to ensure no one was unfairly enriched. This approach will undoubtedly be adopted in the future.

*To prevent disputes and ensure prompt resolutions, it is imperative to thoroughly analyse all legal options and establish the applicable theory to meet the contract's completion deadline. Doing so can prevent any possible disputes and guarantee a prompt resolution. This is especially critical in administrative contracts involving employee or contractor rights, especially those who have signed an administrative contract with the government, as timely resolution impacts public service and interests. Delaying such resolutions could hinder the development cycle of administrative agencies.*

## 1 INTRODUCTION

The world was shaken by the unexpected event of COVID-19 in December 2019.<sup>1</sup> Many countries were unprepared for such an event, leading to significant consequences across many levels. The impact of COVID-19 was vast and affected health, economic, social, and political sectors.<sup>2</sup> The pandemic adversely affected the stock market in the Gulf Cooperation Council.<sup>3</sup> It affected the stability of contracts, particularly administrative contracts.<sup>4</sup>

In response to the pandemic, the UAE implemented laws to limit movement, restrict business operations, and shift to remote learning and working.<sup>5</sup> COVID-19 affected several sectors in the UAE, including the education industry<sup>6</sup> and the construction industry.<sup>7</sup> However, during this time, e-commerce in the UAE thrived despite the effects of international supply chain lockdowns.<sup>8</sup>

UAE officials implemented measures to reduce the risk of COVID-19 transmission,<sup>9</sup> but managing governments and businesses amidst these restrictions was challenging,

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1 WHO, 'Pneumonia of Unknown Cause – China' (*World Health Organization (WHO)*, 5 January 2020) <<https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON229>> accessed 20 February 2024.

2 Farida Al Hosany and others, 'Response to COVID-19 Pandemic in the UAE: A Public Health Perspective' (2021) 11 *Journal of Global Health* 03050, doi:10.7189/jogh.11.03050.

3 Asma Salman and Qaisar Ali, 'Covid-19 and its Impact on the Stock Market in GCC' (2024) 14(1) *Journal of Sustainable Finance & Investment* 220, doi:10.1080/20430795.2021.1944036.

4 Hassan Elhais, 'Covid-19 Impact on Construction Contracts in UAE' (*HG.org Leading Lawyers*, 29 July 2020) <<https://www.hg.org/legal-articles/covid-19-impact-on-construction-contracts-in-uae-56428>> accessed 20 February 2024.

5 Resolution of the UAE Cabinet no 19 of 2020 'Regulating Government Work During Emergency Circumstances' [2020] *UAE Official Gazette* 676.

6 Marvin Erfurth and Natasha Ridge, *The Impact of COVID-19 on Education in the UAEU* (Strategic Report no 1, Sheikh Saud bin Saqr Al Qasimi Foundation for Policy Research 2020).

7 Muhammad Sami Ur Rehman, Muhammad Tariq Shafiq and Muneeb Afzal, 'Impact of COVID-19 on Project Performance in the UAE Construction Industry' (2022) 20(1) *Journal of Engineering, Design and Technology* 245, doi:10.1108/JEDT-12-2020-0481.

8 Ahmad Ghandour and Brendon J Woodford, 'COVID-19 Impact on E-Commerce in UAE' (2020 21st International Arab Conference on Information Technology (ACIT), Giza, Egypt, 2020) doi:10.1109/ACIT50332.2020.9300077.

9 Resolution of the UAE Cabinet no 19 of 2020 (n 5).

particularly when fulfilling contractual obligations. The amendments made in response to the pandemic affected the stability of administrative contracts and the contractor's obligations. Additionally, COVID-19 impacted many fields, such as tourism, affecting the state's economic status.<sup>10</sup> Any negative impacts on tourism can have ripple effects on other fields and the tourism industry in the UAE was undoubtedly affected.<sup>11</sup>

Addressing financial responsibilities and establishing laws to prepare for future pandemics or similar events without resorting to legal action is essential. Similar to other contracts, administrative contracts have time constraints, making it essential for legislators to guide the expected procedures.

This study focuses on force majeure and exceptional circumstances as a means of legal relief for failing to meet administrative contract obligations. Additionally, it examines the impact of the pandemic from multiple perspectives and offers practical examples of the measures taken by the UAE government and the rulings of the UAE courts.

Administrative contracts are governed by theories derived from administrative jurisprudence to terminate or limit the contractor's financial burden with the agency. The UAE administrative contracts are a method of accomplishing the agency's goal in different fields. However, the decisions taken by the UAE government to limit the spread of COVID-19 and protect people's lives resulted in legal and economic repercussions across the public and private sectors.

For instance, the Public Prosecution issued a list of violations and fines committed during the pandemic, such as a 50000 AED fine for escaping a health facility.<sup>12</sup> The suspension of work and the imposition of a curfew created significant financial challenges regarding the implementation of contracts that were concluded before the pandemic and were not expected to occur during the implementation of the contract.

Many states have been affected by COVID-19, such as Zimbabwean agricultural supply chains and markets.<sup>13</sup> In response to the economic challenges posed by the pandemic, the

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10 Putu Mahardika Adi Saputra, 'COVID-19 and Tourism Industry: An Investigation of Spatial Dependence in Europe' (2023) 9(2) Cogent Social Sciences 2282413, doi:10.1080/23311886.2023.2282413.

11 Asad A Aburumman, 'COVID-19 Impact and Survival Strategy in Business Tourism Market: The Example of the UAE MICE Industry' (2020) 7(1) Humanities and Social Sciences Communications 141, doi:10.1057/s41599-020-00630-8.

12 Resolution of the UAE Cabinet no 19 of 2020 (n 5).

13 Tanyaradzwa Rukasha and other, 'Covid-19 Impact on Zimbabwean Agricultural Supply Chains and Markets: A Sustainable Livelihoods Perspective' (2021) 7(1) Cogent Social Sciences 1928980, doi:10.1080/23311886.2021.1928980.

UAE central bank implemented a strategy to provide economic support to companies and consumers, allocating a budget of 100 billion AED.<sup>14</sup>

During the pandemic, UAE contractors encountered obstacles in fulfilling contracts for various reasons. Contracting parties often took legal action to protect their interests, either by terminating contracts when implementation became impossible or by requesting financial adjustments to the contract if it became too burdensome to execute. This research studies the two theories under UAE law and recent court rulings that justify the obligator's failure to fulfil the contractual obligation.

## 2 FORCE MAJEURE AS A LEGAL RELIEF OF ADMINISTRATIVE CONTRACTUAL OBLIGATION

Agencies use administrative contracts to achieve various objectives for the betterment of the agency and the state. The contractual obligation between the agency and the contractor requires comprehensive regulations to specify their respective rights and duties. However, to date, UAE laws lack such regulations due to the ongoing evolution of administrative agencies and administrative law. In the absence of applicable laws, courts rely heavily on administrative jurisprudence.<sup>15</sup>

Administrative contracts in the UAE may be regulated by civil contract laws in some cases and by public law in others, depending on many factors. For an administrative contract to be created, it requires more than just acceptance: one party must be an agency governed by public law, the contract must serve the public agency's interest, and it must contain exceptional rules and conditions not available in civil law. Thus, disputes resulting from a contract made using civil law are heard by non-administrative courts, while disputes from administrative contracts are heard by administrative courts.<sup>16</sup>

Many theories have been raised to retain the contract's financial balance and act as a legal justification for failing to execute the contract's obligations. An agency can use two methods to streamline an administrative contract: using its authority as an agency or acting as an

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14 CB UAE, 'The Central Bank of the UAE Announces a Comprehensive AED100 billion Targeted Economics Support Scheme to Contain the Repercussions of the Pandemic COVID-19' (*Central Bank of the UAE*, 30 November 2021) <<https://www.centralbank.ae/en/news-and-publications/news-and-insights/thematic-news/the-central-bank-of-the-uae-announces-a-comprehensive-aed-100-billion-targeted-economic-support-scheme-to-contain-the-repercussions-of-the-pandemic-covid-19/>> accessed 20 February 2024.

15 Abdul Wahab Abdool, 'Specialized Courts as a Means of Progress and Justice: Model of Specialized Federal Courts in the United Arab Emirates' (The Fourth Conference of the Presidents of the Supreme Courts and Cassation in the Arab Countries, Qatar, 24-26 September 2013).

16 Saif Al-Suwaidi, 'Dissolution of the Administrative Contract' (2021) 18(1) *University of Sharjah Journal of Legal Sciences* 168, doi:10.36394/jls.v18.

individual.<sup>17</sup> This study focuses on the first method and explains the legal justification theories that can be used in case of failure to fulfil contractual obligations.

The agency must compensate the contractor under the contract terms, legal requirements, and administrative principles.<sup>18</sup> The oversight of the relationship between agencies and contractors in the UAE is governed by laws at the federal and state levels. These laws establish the rules of conduct and ensure fairness in contractual agreements.<sup>19</sup> Article 116 of Dubai's law regarding contract and warehouse management in the Government of Dubai states that:

“A. Where, in the course of performance of a contract, inevitable or unforeseeable emergencies occur, which render the performance of the contract onerous for the contracting party and expose him to severe loss due to circumstances beyond his control, the contracting party must continue performing the contract. In this case, the contracted party will have the right to claim fair compensation by submitting a request to the competent committee. The committee will consider the request and submit its relevant recommendations to the Director General to take the actions deemed appropriate in respect of that request. In this regard, coordination with the DOF must be pursued to secure the funds required for compensation.

B. Where, in the course of the performance of a contract, a force majeure event or inevitable, unforeseeable, and general exceptional circumstances occur that render the performance of the contract impossible, the contract will be deemed revoked, provided that the competent committee verifies the occurrence of such force majeure.”<sup>20</sup>

Civil transaction law and civil procedure law are applied to many administrative disputes by UAE courts.

If the contractor fails to fulfil their contract obligations, the agency has the authority to terminate the contract and apply other punishments.<sup>21</sup> Sometimes, unexpected events can arise, which prevent a contractor from fulfilling their obligations under a contract. In such cases, an alternative solution must be found to either allow the obligator to fulfil their obligation once the event has passed or to exempt them from their obligation to ensure fairness legally—a comprehensive definition of what constitutes force majeure and what does not exist.

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17 *ibid* 171.

18 Alia G Musa and Shaymaa S Aziz, ‘The Impact of the Corona Pandemic on the Financial Balance of Administrative Contract’ (2020) 9(1st virtual conf/1) *Journal of College of Law University of Kirkuk for Legal and Political Sciences* 9.

19 Dubai Law no 12 of 2020 ‘Concerning Contracts and Warehouse Management in the Government of Dubai’ <[https://www.gdrfad.gov.ae/themes/gdrfad/content/pdf/law\\_no.\(12\)of2020\\_en.pdf](https://www.gdrfad.gov.ae/themes/gdrfad/content/pdf/law_no.(12)of2020_en.pdf)> accessed 20 February 2024.

20 *ibid*, art 116.

21 Abdol Qader Draji, Agency’s Power to apply administrative punishments’ (*Almanhal*, 2014) <<https://platform-almanhal-com.uaeu.idm.oclc.org/Files/2/79495>> accessed 20 February 2024.

## 2.1. Force Majeure theory within the understanding of UAE law

A force majeure clause is “a Standard Clause that allows the contract parties to allocate the risk of certain force majeure events such as acts of God(School), hurricanes, earthquakes and other natural disasters, epidemics, terrorism, government acts, embargoes, labour strikes and lockouts, and other events beyond the control of the parties.”<sup>22</sup>

The French Civil Code defines force majeure as an external interference not resulting from the debtor's bad faith.<sup>23</sup> Force majeure is a doctrine derived from French law and has been applied in situations such as volcanic eruptions, heat waves, floods, and other unpredictable natural disasters. According to the doctrine, if an event is considered a force majeure, the contractor will excuse or be entitled to suspend the performance of all or part of its obligations.<sup>24</sup> The question remains as to how to determine whether the pandemic can be used as legal relief under the force majeure principle within the UAE laws and adjudications.

The contractor with the agency must abide by the contractual obligations, and in the event of a breach, this entails their responsibility. The court has discretionary power to determine whether the breach that necessitates liability has occurred.<sup>25</sup> In Dubai Cassation Court, case No. 453 of 2016 commercial appeal, the court decided that in the event of force majeure, the contractor's failure to comply with their contractual obligations due to force majeure renders the breach legitimate. Still, certain conditions must be met, and the court decides this. According to Article 273 of the UAE Civil Law which states that:

“(1) In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled. (2) In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract provided that the obligee is so aware.”<sup>26</sup>

22 'General Contract Clauses: Force Majeure (Short Form): Practical Law Canada Commercial Transactions' (*Thomson Reuters Practical Law*, 30 April 2020) <[https://ca.practicallaw.thomsonreuters.com/8-606-9145?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/8-606-9145?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 20 February 2024.

23 Mahmoud Reza Firoozmand, 'Force Majeure Clause in Long-Term Petroleum Contracts: Key Issues in Drafting' (2006) 24(3) *Journal of Energy & Natural Resources Law* 423, doi:10.1080/02646811.2006.11433445.

24 Seng Hansen, 'Does the COVID-19 Outbreak Constitute a Force Majeure Event? A Pandemic Impact on Construction Contracts' (2020) 6(2) *Journal of the Civil Engineering Forum* 201, doi:10.22146/jcef.54997.

25 Fouad Al-Shuaib, *COVID-19 Pandemic as Exceptional Event or Force Majeure: According to Recent UAE Judicial Application* (UAE Ministry of Justice 2020) <<https://www.moj.gov.ae/Content/Userfiles/Assets/Documents/414a6551.pdf>> accessed 20 February 2024.

26 Federal Decree Law no 5 of 1985 'Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates' (amended 27 September 2020) art 273 <<https://uaelegislation.gov.ae/en/legislations/1025>> accessed 20 February 2024.

Although the law lacks a list of events that can be considered force majeure, it sets several standards for considering an event as force majeure. First, it must cause the performance to be impossible, which makes exhausted performance only insufficient reason to be considered force majeure. Therefore, the lack of financial balance caused by the event is not enough to apply force majeure. A force majeure event in the administrative contract results in the cancellation of obligations and termination of the contract. However, if the impossibility of performance is partial or temporary, then the obligation will lapse only in the part related to the impossibility. If the contract is continuous and the impossibility is temporary, the obligation will be temporarily terminated. In these two cases, the law allows for the termination of the contract provided the debtor is informed. Thus, COVID-19 can be considered a temporary incident as it lasted for a few months, depending on the state's procedures to face the pandemic. Thus, the court has the discretion to decide on a case-by-case basis.

According to Article 273 of the UAE civil code, if force majeure is available, the obligation on the contractor will be cancelled and not postponed or require compensation.<sup>27</sup> However, the result will depend heavily on the type of contract and obligation. For example, if the performance of the contract becomes entirely impossible, the obligation will be cancelled, and the law will terminate the contract with no compensation by the contractor. If the contract is partly impossible to perform, the obligation will be cancelled only on the part related to the impossibility of performance. However, in this case, the obligee must be informed if the obligator wants to terminate the contract.

In a 2016 case by Dubai Court No. 453, the court decided that the trial court has the complete authority to collect and understand the reality of the case and assess its evidence, including expert report as an element of the evidence in the case. The evidence obtained by the court is subject to the absolute authority of the court to take it when it is convinced of it. To understand the force majeure doctrine, the following criteria must be examined.

The unforeseeable requirement is essential to applying force majeure to a contract. To what extent can an event be considered unforeseeable? Although UAE laws lack a specific definition of an unpredicted element, UAE courts explain this issue well. The constructional appeal, Dubai Court of Cassation, Appeal No. 49 of 2014, states that for the force majeure clause to apply, the event must be unforeseeable when forming the contract. The court further stated that the event could not be avoided. Notably, this element will vary depending on the type of contract, which includes different obligations. Thus, an event may be enforceable for some but not all contracts. In turn, the question of forcibility will need either new regulations to define it and set criteria for applying it, or it will remain a case-by-case study with the court deciding each case separately. Therefore, if one or two

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27 Al-Shuaib (n 25).



contracting parties predicted or knew about the force majeure event, invoking force majeure in this case will not be applicable.

Unavoidable elements require that the event be beyond the parties' control or the obligee's control. Once the above-mentioned criteria are met, the court will relieve the obligee from the contractual obligation by considering the contract void.

In 2012, Dubai Court of Cassation construction appeal No.174 determined that force majeure requires an act of God. However, Article 287 of the UAE Civil Transaction Law states that:

“If a person proves that the loss arose out of an extraneous cause in which he played no part, such as a natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss, he shall not be bound to make it excellent in the absence of a legal provision or agreement to the contrary.”<sup>28</sup>

Natural disasters and force majeure are mentioned in the article as examples of extraneous causes, demonstrating that force majeure is not limited to acts of God, such as natural disasters. Therefore, the court may find force majeure in any event that meets the requirement to apply the doctrine. To this extent, this may widen or limit the range of force majeure depending on the court's view of each case. Dubai Court of Cassation, Case No. 268 of 2009, ruled on November 15, 2009, stating that not receiving approval for construction drawings by the Dubai Ministry of Land is not considered a force majeure event. Another Dubai Court of Cassation ruling, Case No.578, 23-5-2004, stated that seizing the debtor's money is not considered a force majeure event. Therefore, courts are interpreting the doctrine of force majeure.

In summary, force majeure applies to situations outside the control of both parties in a contract. These events are unavoidable and significantly impact one or both parties' ability to fulfil their obligations. To be considered valid, there must be a clear relationship between the incident and the inability to comply with the contract terms.

## 2.2. Application of Force Majeure on the Pandemic (The case of COVID-19)

With the increasing number of COVID-19 cases, the demands for applying force majeure to evade contractual obligations were expected to increase. It is necessary to carefully examine the theory to prevent contractors from neglecting their obligations and causing harm to public utilities and the administration's interests. The impact of the pandemic depends on the country's economic and political status. A country with a large population growing economically faces greater risks when closed during the pandemic, and its growth

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28 Federal Decree Law no 5 of 1985 (n 26) art 287.

is impeded. It is illogical to immediately apply the force majeure clause in countries that have experienced little or no effect on contracts during the pandemic. It is comprehensive that force majeure depends on the facts of each case and is decided by the court if the required criteria are applicable. Also, it is essential to note that the pandemic can affect some contracts and not others.

For instance, the UAE Ministry of Education suspended in-person classes and shifted to remote learning due to the pandemic, while other ministries continued operating. During a pandemic, the court must thoroughly review administrative contracts to ascertain whether force majeure excuses the contractor's obligation.

In a recent appeal (No. 838/2020) to the Dubai Cassation Court, the court ruled that COVID-19 cannot be considered a force majeure event in this specific case on 7 October 2020.<sup>29</sup> In this case, the plaintiff filed a lawsuit through a performance order requesting the court to force the defendant to pay 9,754,650 AED. Upon a declaration of indebtedness ratified by the notary, the respondent acknowledged his debt and pledged to pay in six instalments. The respondent failed to pay the first instalment on 25 December 2019. On 5 March 2020, the judge issued an order obligating the debtor to pay. The debtor adheres to fulfilling the force majeure conditions that prevent the performance of the debt, represented in the COVID-19 pandemic, and requested the assignment of an accounting expert.

The court determined that force majeure relieves the contracting party of liability to compensate for damages in the event of contract non-performance or breach of obligation if it was caused by an unforeseeable accident that occurred at the time of the contract and was impossible to prevent or evade, making it impossible to fulfil the obligation. Because assessing whether the incident was force majeure is at the discretion of the trial court, the court considers that COVID-19 cannot be invoked as a force majeure because there are no mutual obligations between the two parties in this regard, as the lawsuit was instituted with a debt that is due and payable. The debt met the conditions for obtaining a performance order from being due, fixed in writing, and a specific amount. Thus, the court did not invoke force majeure as it found that the pandemic did not affect the agreed debt payment. Therefore, depending on the court's interpretation, disputes related to COVID-19 as a force majeure may have varying outcomes.

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<sup>29</sup> Case no 838 of 2020 (Dubai Court of Cassation, 7 October 2020).

### 3 EXCEPTIONAL CIRCUMSTANCES AS A LEGAL RELIEF OF CONTRACTUAL OBLIGATION

Many studies examine the effect of COVID-19 on many aspects of life, such as unpaid leave during the pandemic, which causes emotional exhaustion and increased employee distrust towards organisations.<sup>30</sup> It is important to examine the concept of exceptional circumstances to mitigate their impact in the UAE and provide relief, if possible.

According to Article 249 of UAE Federal law concerning Civil Transactions, the phrase "exceptional circumstances" lacks a definition in UAE laws; however, the law mentions the requirements for its application, and court decisions have interpreted the term. Sudden events may affect the obligor's ability to conduct the contract's obligations.<sup>31</sup> In this case, the financial balance between the contract's parties is affected, and exceptional circumstances should be considered. If the court determines that an event is an exceptional circumstance that burdens performance and threatens a significant loss on the obligor, the court will intervene to reduce the obligor's obligation to a reasonable amount. The court has the discretion to decide the amount of relief provided to the obligor, which depends on the type of the contract and the degree of exhaustion imposed on the obligor due to the implementation of the contract.

#### 3.1. The legal concept of "Exceptional circumstances theory" under the purview of UAE laws

An exceptional circumstance is a theory that is driven by French administrative law.<sup>32</sup> Exceptional circumstances refer to a new event outside the obligor's control, which was not foreseen when the contract was formed but caused performance to be oppressive on the obligor. The agency will be obligated to either pay partial and temporary compensation to the obligor or modify the contract's terms so that the obligor can perform the contract obligations.<sup>33</sup> According to the UAE Federal Law No. (5) 1985 Concerning Civil Transaction Law, Article 249 states that:

"If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void."<sup>34</sup>

30 Moh'd Juma Abdalla and others, 'COVID-19 and Unpaid Leave: Impacts of Psychological Contract Breach on Organizational Distrust and Turnover Intention: Mediating Role of Emotional Exhaustion' (2021) 39 *Tourism Management Perspectives* 100854, doi:10.1016/j.tmp.2021.100854.

31 Federal Decree Law no 5 of 1985 (n 26) art 249.

32 Mohamad Qdri Hassan, *Administrative Contracts* (Bright Horizon Bookshop 2016).

33 *ibid.*

34 Federal Decree Law no 5 of 1985 (n 26) art 249.

When applying the exceptional circumstances theory, several criteria must be considered.

Article 249 outlines six key criteria for determining exceptional circumstances.<sup>35</sup> The event, akin to force majeure, must be unforeseen, as exemplified by the Dubai Court of Cassation in Appeal No. 496, Constructional Appeal, dated 10 May 2017, where the court ruled that the 2008 global financial crisis did not qualify as an exceptional circumstance or a force majeure event. The court deemed the 2008 crisis predictable, negating the criteria needed to establish the exceptional circumstances clause. Second, the event must be public and not specific to only the obligor or a few people. The obligor must not contribute to the loss by not executing the contract's obligations.<sup>36</sup> Article 287 states that:

“If a person proves that the loss arose out of an extraneous cause in which he played no part, such as a natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss, he shall not be bound to make it excellent in the absence of a legal provision or agreement to the contrary.”<sup>37</sup>

The Dubai Court of Cassation, in Appeal No.87, a constructional appeal dated 7 July 2013, ruled that if the obligor shared in creating the oppressive burden, the judge may decide differently. Third, the event cannot be prevented with reasonable effort. Fourth, the event needs to happen after the contract is formed but before it is executed. Fifth, the obligor would view enforcing this obligation as oppressive.

The following is a summary of a court ruling from the Dubai Court of Cassation in Appeal No.18 regarding a constructional appeal on 30 May 2010. The court has the authority to decide and evaluate the obligor's burden in a subjective manner. The criteria for this evaluation depend on the type of contract and the impact of extraordinary circumstances on that contract. Sixth, the judge can reduce the obligation upon examination of the event that caused exceptional circumstances. Any agreement contrary to the judge's decision is void.

His Excellency Dr Louay Mohammed Belhoul, Director General of the Legal Affairs Department of the Government of Dubai, confirmed that the COVID-19 crisis brought about profound social and economic transformations, imposing exceptional circumstances on individuals and societies. His Excellency Dr Belhoul stated that the UAE in general, especially the Emirate of Dubai, were at the forefront of countries that had taken the initiative to manage legal risks in handling those events and to address them.<sup>38</sup>

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35 *ibid*, art 249.

36 Musa and Aziz (n 18).

37 Federal Decree Law no 5 of 1985 (n 26) art 287.

38 “Dubai Legal” Holds a Conference Around the Reality of Legal Work in the Time of Covid19’ (*Government of Dubai Legal Affairs Department*, 13 September 2020) <<https://legal.dubai.gov.ae/en/AboutDepartment/Pages/NewsItem.aspx?NewsID=171>> accessed 20 February 2024.

His Highness Sheikh Mohammed bin Rashid Al Maktoum, the Vice President and Prime Minister of the UAE and the Ruler of Dubai, predicted that the future of work requires new approaches. He emphasised that the current reality of work is evolving and must change to accommodate these new developments. Furthermore, he urged that preparations be made differently for a post-COVID-19 world, as it requires unique readiness for the changes it brings.<sup>39</sup>

### 3.2. Application of Exceptional Circumstances Theory on COVID-19

To meet the criteria for being considered exceptional, the judge must determine whether the unforeseeable circumstances. The timing of this decision is of utmost importance. Regarding COVID-19, when did the pandemic truly begin? The impact on contracts could have ended within the first few weeks or months as countries mitigated risks and controlled the effects. It could have reached the point of force majeure, requiring the court's discretion to invoke exceptional circumstances theory.

In a UAE Supreme Court interpretation request No. 2 of the 2020 Constitutional on 27 April 2020, it was ruled that changing the time of the National Council meeting in response to the COVID-19 emergency was permissible. Thus, in this case, breaching the constitutional rules regarding the sessions of the UAE National Council was justified. The National Council had to meet virtually contrary to the requirements and process of the council's session as per the constitution.<sup>40</sup> Consequently, a request to interpret the constitution was submitted to the UAE Supreme Court. The Court faced the question of whether COVID-19 was an enforceable event that virtually justifies the UAE National Council meeting. The court ruled that COVID-19 was, in fact, an enforceable and sudden event that affected the health and well-being of people, which required applying social distancing on all, including the members of the UAE National Council. The justification provided by the court for disregarding the constitution in this matter was solely based on the considerable effects of COVID-19.

Given the persistent danger posed by the virus, the nation acted in line with the current pandemic stage. Protecting people from potential risks warranted the implementation of procedural and preventive measures. One of the primary reasons state institutions use modern technology and visual communication is to maintain the health of individuals. Communication between employees and remote users was crucial for institutional and governmental performance. Due to the state of emergency and the urgency imposed by the

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39 Legal Affairs Department of Dubai, 'Discussing the Reality of Legal Work Under Covid-19' (*Daybreak*, 14 September 2020) <<https://www.albayan.ae/across-the-uae/news-and-reports/2020-09-14-1.3959522>> accessed 20 February 2024.

40 *Request for Interpretation no 2/2020* (The Federal Supreme Court UAE, 27 April 2020) <<https://www.covid19litigation.org/case-index/united-arab-emirates-federal-supreme-court-request-interpretation-no2-2020-2020-04-27>> accessed 20 February 2024.

virus, the Federal National Council fulfilled its obligations and dealt with exceptional cases regarding its sessions and format. After considering the opinions of many of its members and the principle of openness or confidentiality in the sessions, it was determined that the Federal National Council could continue to conduct its parliamentary and legislative work. During this urgent and emergency phase, exceptions were made to complete tasks remotely using modern technology. However, it is important to note that this exception only applies to emergencies.

It is worth noting that the courts in the UAE tend to avoid applying the force majeure or exceptional circumstances theory to cases. This prevents it from being declared a judicial principle that can be used in similar future events. This cautious approach suggests that the UAE courts considered the pandemic to fall under one of these theories but preferred to decide on a case-by-case basis rather than categorising them under a specific theory.

Another question arises regarding the procedural aspect of contractual obligation and whether COVID-19 restriction rules affected the procedures. Examples include construction contracts. In instances where restriction rules were implemented to limit the spread of the virus, would the obligor be liable for late submission? The question is whether this liability justified late fees on the obligor.

Publishing a general decision by the court considering COVID-19 as a legal relief of contractual obligation would have been highly unjust, as many companies could have used this justification for failure to execute their contractual obligations despite not being affected at all.<sup>41</sup>

The European Union responded to COVID-19 by implementing policies in various fields, including health, consumer, employment and social policy, internal market, food safety, human rights, external trade and relations, and more. On 22 February 2022, the European Union's Council Recommendation (EU) 2022/290 amended the previous Council Recommendation (EU) 2020/912, which dealt with the temporary restriction on non-essential travel into the EU. This amendment introduced several rules to regulate entry into the EU during the pandemic. It highlighted the need to revise the current approach outlined in the Recommendation (EU) 2020/912, considering the implementation of the EU Digital COVID certificate. Additionally, the updated recommendation had to consider the changing circumstances surrounding the pandemic, such as the emergence of the Omicron variant, the increasing number of vaccinations, and the gradual lifting of travel restrictions worldwide.<sup>42</sup>

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41 Yassir Al-Iftaihat, 'Covid-19 Pandemic's Impact on the Execution of Contracts' (2020) 8(6) Kuwait International Law School Journal 778.

42 Council Recommendation (EU) 2022/290 of 22 February 2022 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction [2022] OJ L 43/79.

The Court of Justice of the European Union ruled (Case C-206/22) that an employee on paid annual leave placed under quarantine may not be entitled to carry over that leave under EU law.<sup>43</sup> An employee took paid annual leave from 3 to 11 December 2020 but was later placed under quarantine because they had been in contact with someone who tested positive for Covid-19. The employee requested that the employer carry over those days of leave, but the employer refused. As a result, the employee took legal action in the labour court, claiming that the employer's refusal was against EU law. According to the court, national law mandates that employers should allow their workers to carry over their leave days only if they can prove that they were unable to work during the leave period. However, the German Court on 14 December 2023 ruled that being under quarantine alone does not constitute an inability to work. The labour court then asked the Court of Justice whether EU law requires that the leave days coinciding with the quarantine be carried over. The Court of Justice ruled that EU law does not require the days of paid annual leave, during which the worker is not sick but is in quarantine due to being in contact with an infected person, to be carried over.

On the other hand, the UAE Federal Authority for Government Human Resources issued new quarantine rules for Federal employees through Circular No. 4 of 2021. According to the guidelines, Federal employees who had received both doses of the COVID-19 vaccine and had contracted the virus or had been in contact with someone who tested positive needed to quarantine and work remotely for a certain period, as directed by the UAE health authorities. On the other hand, employees who had not received both vaccine doses, had contracted the virus, or had been in contact with someone who tested positive were also required to quarantine. The number of quarantine days was deducted from their annual leave. For those who did not have enough leave balance, the quarantine period was treated as unpaid leave. The Authority also stated that these employees were expected to fulfil any work requirements assigned to them during the quarantine period.<sup>44</sup>

Both the legal systems of the UAE and the European Union took precautionary measures to deal with the impact of COVID-19 on employment and administrative contracts, ensuring the prevention of the spread of the virus. Despite the circumstances, both systems maintained their work cycles to provide essential services to the public, which was vital for the consistency of government operations. It was important to provide relief only when applicable, as there was a risk it could be used to avoid fulfilling contractual obligations, even when feasible.

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43 *TF v Sparkasse Südpfalz* Case C-206/22 (Court of Justice EU (First Chamber), 14 December 2023) <<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022CJ0206>> accessed 20 February 2024.

44 FAHR, 'New Quarantine Rules Federal Government Employees' (*UAE National Emergency and Crisis Management Authority (NCEMA)*, 27 January 2021) <<https://covid19.ncema.gov.ae/en/News/Details/1644>> accessed 20 February 2024.

## 4 SEEKING TO REGULATE THE LEGAL RELIEFS FOR FUTURE RISK EVENTS

This study aimed to address and identify the two main theories and their implication within UAE law by exploring the requirements and applications of force majeure and exceptional circumstances. Determining the applicability of these theories to COVID-19 remained unclear. To date, no court decisions produced by the UAE court have considered the pandemic as a force majeure or exceptional circumstance for many reasons, such as the complexity and variety of obligations towards each contract. The impact of the pandemic was vis-a-vis each contract, necessitating the court to examine the effects of the pandemic on the contractual obligation to ascertain whether relief was warranted or risked unnecessary enrichment.

The distinction between force majeure and exceptional circumstances lies in their effects on contractual obligations. A force majeure clause eliminates the obligation entirely, whereas emergency circumstances only limit it. Second, force majeure clauses should only excuse performance if it is impossible, not just onerous, except in exceptional circumstances. To differentiate between the force majeure doctrine and the doctrine of exceptional circumstances, it is important to consider the effects of the event. Force majeure requires a more extreme impact, as it must be impossible to fulfil an obligation. Exceptional circumstances only require that fulfilling the obligation becomes excessively impossible.<sup>45</sup>

Regarding the outcomes of applying these theories, the penalty under force majeure is the termination of the contract. In contrast, the penalty under exceptional circumstances is the amendment of the contract's terms to restore its financial balance.<sup>46</sup>

In the UAE, civil law articles are primarily used to govern the two theories as specific regulations designed explicitly for theories applied to administrative contracts are lacking. In such cases, courts rely on administrative law jurisprudence and other sources, such as laws and precedents, to make their judgment. Examining the force majeure and exceptional circumstances clauses remains a case-by-case analysis.

To regulate the matter, the UAE legislation must issue administrative laws that regulate the main theory, which may lead to relief of the obligor from their contractual obligations. A specialised committee should be established to study the facts of the proposal for each claim and provide recommendations to provide prompt responses that will not affect the performance of the contract. The committee could recommend legal action for cases where force majeure or exceptional circumstances apply or advise the obligor to fulfil contracts where these theories do not align.

Creating a list of pandemic diseases and the magnitude of those types of pandemics could guide the obligor, the committee, and the court in this matter. Once the obligor's claim

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45 Musa and Aziz (n 18).

46 *ibid.*



matches the requirement and the list provided by the ministry, they could file a claim to the committee for further examination of the facts of the claim, thus reducing the number of useless cases in the court and providing legal consultation to clarify the rules applicable to administrative cases. Thus, it helps push the performance of administrative contracts without interruptions, which is essential for the development of agencies.

One main result of this study is that administrative decisions in the UAE are expected to be less strict in the future compared to the beginning of the pandemic. The reason behind this is the introduction of new public employment legislation, which aims to reduce the severity and rigidity of such decisions. For example, modern employment contracts that allow remote work have been introduced due to the pandemic's impact on administrative conditions in the UAE.

Article 6 of the human resources law in the federal government states that:

“Employment in federal entities shall be subject to one of the following patterns: A. Full-Time: Working for a single federal entity for the full daily working hours, throughout official working days, whether from the workplace, remotely or the hybrid work mode, in accordance with the employment contract or what is agreed upon between the federal entity and the employee. B. Part-Time: Working for a federal entity for a specific number of working hours or days scheduled for work, whether from the workplace, remotely or in a hybrid work mode, in accordance with the employment contract or what is agreed upon between the federal entity and the employee. C. Temporary Work: Work which nature of implementation nature requires a specific period of time, or which focuses on a certain work, ending with its completion. D. Flexible Work: Work which performance hours or working days change according to the employer's volume of work and economic and operational variables, where the employee may work for the employer at variable times according to work conditions and requirements. 2. Based on the Authority's recommendation, and by a resolution of the Council of Ministers, employment patterns mentioned.”<sup>47</sup>

The introduction of remote or hybrid work modes and flexible work represents significant advancements in UAE regulations. These improvements have the potential to benefit administrative agencies, corporations, and individuals who interact with them. The legal reforms suggest a more adaptable approach to handling future crises rather than completely halting work, which could result in financial losses for the UAE.

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47 Federal Decree Law no 49 of 2022 'On Human Resources in Federal Government' [2020] UAE Official Gazette 737, art 6.

## 5 CONCLUSIONS AND RECOMMENDATIONS

In summary, the force majeure theory differs from exceptional circumstances in several aspects. Firstly, the force majeure theory requires that the obligation becomes impossible due to an unexpected event. In contrast, exceptional circumstances only make it difficult for the contractor to perform the contract due to the unforeseen event. Both theories require that the event is sudden and that neither party to the contract had any idea that it would occur in the future at the time of signing the contract. Each theory has a different result. Force majeure cancels a contract, while exceptional circumstances provide temporary relief from contractual obligations.

It must be noted that the force majeure or exceptional circumstances doctrine may not always apply to contracts performed during the pandemic. Notably, there has been no official statement by the court or the state regarding the applicability of these doctrines to all or certain contracts. Each case has been handled individually to ensure no one is unfairly enriched. This approach will certainly be adopted in the future. It is imperative to thoroughly analyse all legal options and establish the applicable theory to meet the deadline for completing the contract. Doing so can prevent any possible disputes and guarantee a prompt resolution.

The study discovered that neither the force majeure nor the exceptional circumstances theory can be universally applied to all cases. As every contract has its own set of rules and obligations, the court must evaluate each case to determine which theory, if any, is appropriate. However, the study proposes that established policies should be created to guide individuals and agencies in the future on how to act without affecting the essence of the administrative contract and to provide temporary relief that allows the obligor to fulfil their duty. In future pandemics, the UAE may not allow force majeure or exceptional circumstances claims due to the advanced progress, new laws, and policies that effectively address the situation, as suggested by the study.

The new federal human resource law acknowledges the positive impact of COVID-19 on UAE administrative law, allowing for flexible and remote work and education, which is a significant outcome of this study. It is recommended that a separate law be established to govern administrative cases instead of relying on civil transaction law and civil procedural law. Administrative cases are distinct in nature and require unique regulations for administrative decisions and contracts.

The United Arab Emirates should prioritise creating a crisis and pandemic preparation strategy that does not require suspending the agency's work or terminating administrative contracts. This preparation can take the form of more flexible laws. A well-defined policy should clearly outline the criteria for applying the force majeure or exceptional

circumstances theory to future events involving administrative contracts. This will help both the agency and contractors navigate the situation before resorting to legal action.

To effectively manage crises, administrative agency committees specialised in crisis decision management should be established to thoroughly review each administrative decision or contract during a crisis to prevent cancellation. It is recommended that government agencies avoid imposing any restrictions on movement or work during future pandemics that could potentially hinder administrative work. The financial repercussions of the pandemic had a considerable effect on the UAE, making it essential to avoid any monetary losses to prevent claims for compensation from those negatively impacted in the future.

It is important to educate people about the legal theories of relief of contractual obligations, which can be used during difficult situations. In addition, it is important to stay up-to-date with the new legislation issued by the UAE legislative and understand legal tools that can be used during a crisis. Furthermore, having a good understanding of administrative law is crucial for administrative agencies to ensure the proper application of the law.

## REFERENCES

1. Abdalla MJ and others, 'COVID-19 and Unpaid Leave: Impacts of Psychological Contract Breach on Organizational Distrust and Turnover Intention: Mediating Role of Emotional Exhaustion' (2021) 39 *Tourism Management Perspectives* 100854, doi:10.1016/j.tmp.2021.100854.
2. Abdool AW, 'Specialized Courts as a Means of Progress and Justice: Model of Specialized Federal Courts in the United Arab Emirates' (The Fourth Conference of the Presidents of the Supreme Courts and Cassation in the Arab Countries, Qatar, 24-26 September 2013).
3. Aburumman AA, 'COVID-19 Impact and Survival Strategy in Business Tourism Market: The Example of the UAE MICE Industry' (2020) 7(1) *Humanities and Social Sciences Communications* 141, doi:10.1057/s41599-020-00630-8.
4. Al Hosany F and others, 'Response to COVID-19 Pandemic in the UAE: A Public Health Perspective' (2021) 11 *Journal of Global Health* 03050, doi:10.7189/jogh.11.03050.
5. Al-Shuaib F, *COVID-19 Pandemic as Exceptional Event or Force Majeure: According to Recent UAE Judicial Application* (UAE Ministry of Justice 2020). <<https://www.moj.gov.ae/Content/Userfiles/Assets/Documents/414a6551.pdf>> accessed 20 February 2024.
6. Al-Suwaidi S, 'Dissolution of the Administrative Contract' (2021) 18(1) *University of Sharjah Journal of Legal Sciences* 168, doi:10.36394/jls.v18. 171

7. Draji AQ, 'Agency's Power to Apply Administrative Punishments' (*Almanhal*, 2014) <<https://platform-almanhal-com.uaeu.idm.oclc.org/Files/2/79495>> accessed 20 February 2024.
8. Elhais H, 'Covid-19 Impact on Construction Contracts in UAE' (*HG.org Leading Lawyers*, 29 July 2020) <<https://www.hg.org/legal-articles/covid-19-impact-on-construction-contracts-in-uae-56428>> accessed 20 February 2024.
9. Erfurth M and Ridge N, *The Impact of COVID-19 on Education in the UAEU* (Strategic Report no 1, Sheikh Saud bin Saqr Al Qasimi Foundation for Policy Research 2020).
10. Firoozmand MR, 'Force Majeure Clause in Long-Term Petroleum Contracts: Key Issues in Drafting' (2006) 24(3) *Journal of Energy & Natural Resources Law* 423, doi:10.1080/02646811.2006.11433445.
11. Ghandour A and Woodford BJ, 'COVID-19 Impact on E-Commerce in UAE' (2020 21st International Arab Conference on Information Technology (ACIT), Giza, Egypt, 2020) doi:10.1109/ACIT50332.2020.9300077.
12. Hansen S, 'Does the COVID-19 Outbreak Constitute a Force Majeure Event? A Pandemic Impact on Construction Contracts' (2020) 6(2) *Journal of the Civil Engineering Forum* 201, doi:10.22146/jcef.54997.
13. Hassan MQ, *Administrative Contracts* (Bright Horizon Bookshop 2016).
14. Musa AG and Aziz SS, 'The Impact of the Corona Pandemic on the Financial Balance of Administrative Contract' (2020) 9(1st virtual conf/1) *Journal of College of Law University of Kirkuk for Legal and Political Sciences* 9.
15. Rukasha T and other, 'Covid-19 Impact on Zimbabwean Agricultural Supply Chains and Markets: A Sustainable Livelihoods Perspective' (2021) 7(1) *Cogent Social Sciences* 1928980, doi:10.1080/23311886.2021.1928980.
16. Salman A and Ali Q, 'Covid-19 and its Impact on the Stock Market in GCC' (2024) 14(1) *Journal of Sustainable Finance & Investment* 220, doi:10.1080/20430795.2021.1944036.
17. Sami Ur Rehman M, Shafiq MT and Afzal M, 'Impact of COVID-19 on Project Performance in the UAE Construction Industry' (2022) 20(1) *Journal of Engineering, Design and Technology* 245, doi:10.1108/JEDT-12-2020-0481.
18. Saputra PMA, 'COVID-19 and Tourism Industry: An Investigation of Spatial Dependence in Europe' (2023) 9(2) *Cogent Social Sciences* 2282413, doi:10.1080/23311886.2023.2282413.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Практична нотатка

### ОЦІНКА ПРАВОВИХ НАСЛІДКІВ ПАНДЕМІЇ COVID-19 ЩОДО АДМІНІСТРАТИВНИХ ДОГОВОРІВ В ОБ'ЄДНАНИХ АРАБСЬКИХ ЕМІРАТАХ: ПОРІВНЯЛЬНИЙ ОГЛЯД

**Сумая Абдуларагім Гамдан Нассер Аль Джагоорі\***

#### АНОТАЦІЯ

**Вступ.** Це дослідження має на меті встановити, чи кваліфікується COVID-19 як форс-мажор або надзвичайна обставина відповідно до законів Об'єднаних Арабських Еміратів (ОАЕ), і оцінити, чи може такий інститут дозволити обійти договірні зобов'язання. У цій статті з'ясовується, як COVID-19 вплинув на адміністративні договори в ОАЕ, за допомогою використання законів ОАЕ та тематичних досліджень для того, щоб вивчити юридичні теорії, які виправдовують невиконання зобов'язань у таких договорах.

ОАЕ, як і багато інших країн, зіткнулися з непередбачуваною подією та використали всі свої ресурси та робочу силу для боротьби з небезпекою та для захисту свого народу. Це призвело до різноманітних обмежень, таких як обов'язковий карантин для всіх, хто в'їжджає в ОАЕ, і обмеження на виїзд з країни. Крім того, деякі Емірати в ОАЕ, такі як Абу-Дабі, запровадили обмеження на в'їзд, що зобов'язувало надати негативний результат тесту на COVID-19, а пізніше в'їзд дозволявся лише вакцинованим особам.

Крім того, у статті розглядаються необхідні критерії для демонстрації форс-мажорних або надзвичайних обставин у зазначених контрактах. У цьому дослідженні використовувався аналітичний підхід до вивчення законів і судових рішень. З огляду на отримані результати, спалах COVID-19 не вплинув безпосередньо на адміністративні договори в ОАЕ. Ймовірно, це пов'язано з ефективним підходом влади до ситуації. Слід зазначити, що теорії форс-мажорних обставин і надзвичайних обставин не можна було автоматично й загально застосовувати до всіх договорів, оскільки кожен договір був унікальним і вимагав індивідуального розгляду. У статті представлено потенційні теоретичні та практичні особливості, що відкриває можливості для майбутніх досліджень.

*Метою роботи є визначити, яку юридичну теорію, якщо така існує, можна застосувати до COVID-19 – форс-мажорних чи надзвичайних обставин. Крім того, перевірити, чи буде уряд ОАЕ запроваджувати будь-які обмеження на пересування та роботу в очікуванні будь-яких майбутніх пандемій, взявши до уваги політику країни, закони та заходи з підготовки до кризи останніх років.*

**Методи.** У цій роботі використовується аналітичний підхід для вивчення основних теорій, викладених у Законі ОАЕ про цивільні транзакції № 30 від 2020 року щодо форс-мажору та надзвичайних обставин. Ці теорії можуть забезпечити звільнення від договірних зобов'язань, якщо виконуються певні критерії. У дослідженні перевіряється, чи відповідає COVID-19 одній, обом або не відповідає жодній із цих теорій для звільнення підрядника за адміністративним договором від його зобов'язань через наслідки пандемії. У цій роботі також розглядаються та порівнюються закони та справи Європейського Союзу та Суду Європейського Союзу. Мета — порівняти правові системи ОАЕ та ЄС, зосередившись на адміністративних договорах і рішеннях, прийнятих під час пандемії COVID-19. Також здійснюється аналіз прогресу у боротьбі з пандемією COVID-19 і нещодавню поправку до федерального закону про кадри. Цей аналіз, у якому використовуються різноманітні періоджерела та вторинні ресурси, зокрема дослідницькі статті та книги, здебільшого зосереджується на законах і справах ОАЕ.

**Результати та висновки.** У результаті дослідження було з'ясовано, що COVID-19 значно вплинув на адміністративні договори та рішення в усьому світі, особливо в ОАЕ. Проте юридична теорія може виправдати відхилення від регулярних протоколів через непередбачувані обставини. Також було досягнуто мети пояснити ці теорії за допомогою тематичних досліджень, які слугуватимуть прикладом для майбутніх подібних заходів. Після ретельного вивчення означеної теми було зроблено висновок, що ні теорія форс-мажору, ні теорія надзвичайних обставин не застосовуються до всіх випадків. Через різні правила та зобов'язання кожного договору суд повинен оцінити кожну справу, щоб визначити, яка теорія може бути застосована, якщо така є.

Тож, з огляду на результати дослідження, рекомендовано встановити чітко визначену політику, якою б керувалися особи та установи в майбутньому щодо того, як потрібно діяти, щоб не вплинути на суть адміністративного договору, і як забезпечити тимчасове послаблення умов договору, яке дозволить зобов'язаному виконувати свої обов'язки. У статті припускається, що ОАЕ, можливо, не дозволять посылатися на форс-мажорні або виняткові обставини під час майбутніх пандемій завдяки значному прогресу, новим законам і політиці, які вражають своєю ефективністю у вирішенні цієї ситуації.

У дослідженні також розглядався новий федеральний закон про кадри, який набрав чинності у 2022 році, що регулює діяльність державних службовців, і положення, які дозволяють віддалену роботу в надзвичайних ситуаціях. Швидка адаптація до цих обставин вказує на збільшення правової гнучкості, що потенційно зменшує залежність від правових теорій для звільнення від договірних зобов'язань у майбутньому.

Важливо зазначити, що доктрина форс-мажорних обставин або надзвичайних обставин не завжди може застосовуватися до договорів, укладених під час пандемії або майбутніх подій, подібних до COVID-19. Жодна офіційна заява суду чи держави не надала

універсального чи конкретного роз'яснення щодо застосування цих доктрин. Це вказує на те, що для визначення того, чи може звільнення від обов'язку вважатися таким, що підпадає під дію цих теорій, суд повинен його ретельно вивчити та прийняти остаточне рішення. Кожен випадок розглядався індивідуально, щоб ніхто не був несправедливо збагачений. Цей підхід, безсумнівно, буде прийнятий у майбутньому.

Щоб запобігти виникненню спорів і забезпечити їхнє швидке вирішення, необхідно ретельно проаналізувати всі юридичні варіанти та створити прикладну теорію, яка допоможе дотриматися терміну завершення договору. Це може запобігти будь-яким можливим спорам і гарантувати швидке вирішення проблеми. Це особливо критично в адміністративних договорах, які стосуються прав працівників або підрядників, зокрема тих, хто підписав адміністративний договір з урядом, оскільки своєчасне вирішення проблеми впливає на державну службу та інтереси. Затримка у вирішенні таких спорів може перешкоджати циклу розвитку адміністративних органів.

**Ключові слова:** COVID-19, форс-мажорні обставини, надзвичайні обставини, адміністративні договори.