

ARTICLE 70 OF THE UAE CIVIL CODE – LITTLE, BUT FIERCE!

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Article 70 of the UAE Civil Code¹ provides:

"If a person seeks to set aside what he has (conclusively) performed, his attempt shall be rejected".

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Those familiar with civil law systems will be aware of the overarching principles of good faith which apply under such laws, but the practical application of which can sometimes feel nebulous.

Article 70, on the other hand, gives definition and certainty to one breach of good faith, namely, that if a person tries to disown or deny what he or she previously said or did, then such attempt shall be entirely disregarded.

In Dubai Court of Cassation case No. 236/2020², the court references Article 70 and explains that:

"the general rule provided for by Article 70 of the Civil Transactions Law is that a person who attempts to undo what has been done by them shall not succeed in their attempt, which is an application of the general rule which is based on moral and social considerations for fighting such conduct and for ensuring acting in good faith that should be the basis of all acts and procedures."

The eminent commentator, Professor Mohamed S. Abdel Wahab, explains that Article 70 enshrines the UAE law's version of estoppel as a sacrosanct principle and an element of good faith³:

*"While the principle of estoppel is not be legislatively captured in most civil codes throughout the MENA region...Article 70 of the UAE Civil Code...explicitly capture the principle of estoppel. **According to this sacrosanct principle, he or she who seeks to revoke what has been agreed, or engages in contradictory behaviour, shall be barred from doing so.** Moreover, estoppel is explicitly endorsed and upheld by the judgment of Arab courts, and it is validly argued that estoppel is a variant of good faith."*

The UAE Ministry of Justice commentary on the UAE Civil Code⁴ provides other examples of breaches of Article 70, as follows:

"...where a person sells property to another, and a third person acts as guarantor of the price. In such a case, the guarantor may not be heard to say that he is the owner of the property sold, because that would be contradictory to his having asserted that he was the guarantor only".

"... if a person deposits goods with another by way of bailment having made a claim that he is acting as the agent of the bailor, he may not thereafter demand the return of the goods into his own hands claiming that there was no agency".

"...if a minor sells goods, alleging that he is of full age. In such a case he may not thereafter deny the sale on the grounds that he is not of full age".

¹ Federal Law 5 of 1985 on the Civil Transactions Law of the UAE

² Dubai Court of Cassation, Civil Appeal No. 236/2020 dated 13 August 2020.

³ See Wahab, "Construction Arbitration in the MENA Region", which is included in the *GAR Guide to Construction Arbitration*, 4th Edition (October 2021).

⁴ UAE Civil Code and Ministry of Justice Commentary – 2010 – James Whelan

In a 2006 UAE Court of Cassation case relating to a construction contract, the court relied on Article 70 in refusing to issue a judgment awarding a delay penalty where the stoppage of construction work prior to the end of the contract period was due to the employer. The judgment stated:

"...In the specific context of construction contracts, if the Employer or Contractor engage in contradictory behaviour or either seeks to revoke what has been agreed or endorsed, estoppel and good faith will militate against invalidating such actions or omissions...in addition he who seeks to contradict his own previous actions is estopped from doing so"⁵.

It is interesting to note that, in this case⁶, Article 70 was applied in a similar way to the application of the prevention principle in common law – i.e. that the employer was not able to recover delay damages, because the delay was caused by its own act of prevention.

In recent years, Article 70 has also been relied on in cases relating to "apparent authority" as the basis to argue that a party which allows its representative to sign a contract may not, after the conclusion of the contract, argue that the representative was not so authorised, as a means to avoid the contract.

For example, in 2020, Dubai Court of Cassation cited Article 70 in deciding that the defendant party may not avoid the application of an arbitration agreement contained in policy terms which it had issued:

*"...As to the pleading on invalidity of the arbitration clause for not being included in a separate agreement from the general conditions printed in the insurance policy, this is responded to by that it is clear that the form of the policy is issued by the defendant who prepared its terms and the provisions included in it. Article 70 of the Civil Transactions Law provides that **a person who attempts to undo what has been done by them shall not succeed in their attempt**. A party may not rely on his own doing as evidence on the validity of their claim against others...hence, this pleading, if its conditions are established, is in favour of the insured not the insurer who included this clause in the insurance policy"⁷.*

These examples show that Article 70 may be applied to a myriad of circumstances, wherever a party attempts to disown or deny what it previously said or did.

In essence, Article 70 of the Civil Code binds parties to their words and deeds, preventing them from engaging in contradictory conduct.

It provides another good reason for commercial entities to ensure that their contemporary records accurately detail the conduct and assertions of the parties they deal with, and are safely maintained, in case they are required as evidence in the future, against a party acting contrarily to its previous manner or agreement.

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⁵ UAE Court of Cassation, No. 87 of 27 dated 26 June 2006

⁶ Ibid

⁷ Dubai Court of Cassation, Civil Appeal No. 236/2020 dated 13 August 2020.

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