Arab court qualifies COVID-19 as force majeure event

March 21, 2021

In what could possibly be the first judgment amongst Arab jurisdictions, the Egyptian Administrative Court within the State Council ruled that COVID-19 qualifies as a force majeure event.

To clarify the title of this article; 'Arab court' refers to the fact that this judgement was obtained from *an* Arab court given that there is much cross-jurisdictional reliance on judgements and case law amongst Arab economies such as the United Arab Emirates, Palestine, Iraq, Jordan, Kuwait, Egypt, Lebanon, Gaza, and so on.

Courts in these jurisdictions respect rulings from their Arab counterparts on matters that have not been addressed at length in their own respective jurisdictions.

Hence, the significance of this judgement is that it may have extra jurisdictional effects and be grounds – or be argued as grounds by counsel – in other courts in Arab jurisdictions.

The dispute arose when a president of a government association ordered suspension of a scheduled election until normalization of daily life.

An association member challenged the president's decision before the Administrative Court appealing to nullify the decision.

The association president argued that COVID-19 was a force majeure event and that various Government decisions had been issued prohibiting certain activities which were sufficient grounds for the suspension of the scheduled election.

In June of 2020, the Court ruled qualifying COVID-19 as a force majeure event as follows:

“As with respect to the current dispute, and in light of the force majeure event that has effected the globe, the World Health Organization has announced that the novel coronavirus (COVID-19) is to be categorized as a pandemic, and as the State has taken action to deter the pandemic and protect the health of its citizens…to temporarily suspend all activities that require mass gatherings for citizens or that require their transport from one governate to another en masse (such as concerts, cultural events, events, and festivals) until further notice…”

The Court also addressed the implications of Sharia law on COVID-19 related disputes as follows:

“…as human life is the most valuable thing that governments, nations, organizations, and associations can protect, it goes without saying that protection of life is an epitome priority under Sharia law, as without human life the world does not prevail, and as in Sharia law; he who saves a single life is as if he saved all human life…and although it is a foundation of democratic life to permit elections to occur as scheduled; no reason can trump the duty to protect human life.”

The GCC and Levant countries are civil law jurisdictions and generally apply the same interpretation of foundational legal principles under civil law; such as those related to force majeure.

Since May 2020, practitioners and courts in Arab jurisdictions have turned to the judgment issued by the Paris Commercial Court in May where the Paris Commercial Court found that COVID-19 could not have been reasonably foreseeable and qualifies as a force majeure event – a judgment that was circulated and discussed widely and relied on regionally given that Arab jurisdictions share the commonality with France as

civil law jurisdictions.

Now, parties with business in the Middle East looking to argue that COVID-19 is a force majeure event and relieve themselves of any impossible obligations may draw reference from a much closer jurisdiction; Egypt.

The judgment is also significant as it relies on the World Health Organization's categorization of COVID-19 as a pandemic but further delves into Sharia law principles on the protection of human life, in addition to restrictive Government orders.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com