# First UAE Supreme Court COVID-19 Judgement (Trade Secrets)

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In late 2020, the UAE Federal Supreme Court ruled on the first COVID-19 related dispute which involved trade secrets. For employers and employees, this case provides a long-awaited answer as to the importance of how and when to treat COVID-19 issues with secrecy in the workplace.

**Facts**

The case in question revolved around a police officer who was to guard a house containing individuals that had contracted COVID-19. The officer was tasked with ensuring none of the infected residents leave the house, nor for anyone to enter.

Whilst guarding the house, the officer took a video of himself – with the house in the background – and sent the video via WhatsApp to his family group chat, warning them to stay away from the house/area to avoid contracting the virus.

The Public Prosecution filed a criminal case against the officer, claiming he had breached trade secrecy by sharing the video with his family.

**Issues**

The Public Prosecution brought the claim against the officer in the Federal Primary Court, pursuant to Article 379 of the UAE Penal Code which stipulates:

*"Shall be subject to a jail sentence for a minimum period of*

*one year and/or to a minimum fine of twenty thousand Dirhams, whoever by virtue of his profession, craft, position or art is entrusted with a secret and divulge it in cases other than those allowed by law or if used for his own personal interest or for the interest of another person, unless authorized by the confiding person to disclose or use it.*

*The penalty shall be imprisonment for a term not exceeding five years in case the perpetrator is a public servant or a person in charge of a public service who was confided the secret because or on the occasion of discharging his duties or performing his service."*

There are two elements that are required to satisfy Article 379 of the UAE Penal Code:

(1) obtainment of the confidential information/secret through one's profession, craft, or possession, and;

(2) divulging such information for their own personal interest or the interest of others.

**Rule**

The Federal Primary Court ruled in favor of the officer and acquitted him of the accusation brought against him. The officer presented his argument to the Federal Primary Court detailing the two degrees of the accusation: (1) the information of the house containing individuals that had contracted the virus was not characterized by secrecy, and (2) the purpose of him sharing a video was not to divulge a secret. As a result, the Public Prosecution appealed the ruling before the Federal Court of Appeals, seeking to overturn the acquittal and requesting a sentence of three months' imprisonment as punishment for the officer.

The Federal Court of Appeals determined that the officer sending a video of the house he was guarding to his family, was a breach of the confidentiality of the information defined

within Article 379 of the UAE Penal Code. The Federal Court of Appeals found that although the purpose of the officer sharing such information had no criminal intent as he was merely alerting his family to be wary of the house in order to avoid contracting the virus, he had divulged such information for the benefit of others – as described within the Article.

Furthermore, in accordance with Article 379 of the UAE Penal Code, for the crime stipulated in the Article to exist, the accused must "*by virtue of his profession, craft, position […] is entrusted with a secret and divulge it […] for his own personal interest or for the interest of another person*".

The Federal Court of Appeals determined that the officer had obtained the confidential information of the house containing the individuals that had contracted the virus from his Captain, and that such information would not have been made available to him unless it were for his profession.

The ruling of the Federal Court of Appeals was challenged by the officer before the Federal Supreme Court.

The Federal Supreme Court found that the first element of Article 379 of the UAE Penal Code was not satisfied, even though the information was confidential, there was no criminal intent behind the actions of the officer. Additionally, the Federal Supreme Court found – similarly to the Federal Primary Court – that the purpose of the officer sharing the information with his family was no more than a warning and was not an act of divulging a secret. Therefore, the elements of Article 379 of the UAE Penal Code had not been satisfied.

**Decision**

The Federal Supreme Court overturned the judgment of the Federal Court of Appeals and acquitted the officer of the accusations, ruling that he was not guilty of criminal activity in his actions.

**Why This Case Matters?**

This is the first case that involved COVID-19 to be adjudicated by the Federal Supreme Court and in concurrence the first dispute involving breach of secrecy regarding COVID-19.

For employers and employees, this case provides a long-awaited answer as to the importance of how and when to treat COVID-19 issues with secrecy in the workplace and provides a judicial test that could be applied in employment policies and procedures.

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