

An Overview of Criminal Proceedings in Dubai, UAE

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This article will provide a general overview and explanation of the UAE criminal process in using a question and answer format and discuss a case before the Dubai criminal court relating to defamation under the Cyber Crimes Law.

How do victims of crimes commence a criminal case in the UAE?

The first step to initiate a criminal action is for the victim to file a complaint against the offender before the police. The complaint needs to set out the incident that occurred and sequence of events pertaining to the criminal offence. The complaint may be formal (in writing) and by way of an oral statement before the police which will be recorded in Arabic and signed by the complainant.

The complainant is required to file the complaint before the police station which has jurisdiction to hear the complaint (i.e. where the criminal offence or unlawful act took place).

Will the victim be able to bring witnesses?

The complainant will be given the opportunity to call upon witnesses to testify in his or her favour before the police.

Will the accused be questioned by the police and be given the opportunity to bring witnesses?

Following the statement of the complainant, the police will contact the accused and take his or her statement. During this process, the accused may inform the police of potential witnesses who can testify in the accused's favour and the police may accordingly summon defense witnesses and record their statements.

What happens after a criminal case is commenced?

The police will refer the complaint to relevant departments within the police station that are responsible for reviewing and opening complaints (i.e. electronic crimes departments, forensic medicine department).

Once the police have taken the statements of all parties and finalized their task, the complaint will be referred to the public prosecution, a judicial authority empowered to refer cases to the criminal court in the event the responsible prosecutor assigned to review the case finds that a criminal offence has taken place under the UAE Penal Code (Federal Law No. 3 of 1987).

Will any legal fees be incurred for filing a complaint before the police?

No fees will need to be paid for filing a criminal complaint before the police. However, if the complainant seeks the [legal services](#) of an attorney, then professional legal fees will need to be paid to the attorney.

What is the role of the public prosecution?

Once the police have referred the matter to the public prosecutor, the prosecutor will summon the complainant and the accused separately for an interview and both parties may also be given the opportunity to bring witnesses to testify in their favour before the prosecutor.

The statements of the parties involved in the complaint will also be recorded in Arabic by the clerk assisting the prosecutor and signed by the parties.

If the prosecution finds that the criminal action is ready to be lodged, it will summon the accused to appear before the competent criminal court and provide the competent court with details of the crime(s) the accused has been charged with. If on the contrary it deems that there is no reason to pursue the action, it shall order that it be archived.

How are crimes categorized under UAE law?

Crimes under the UAE Penal Code are divided into three categories depending on the seriousness of the punishment that may be applied:

1. Contraventions (violations)
2. Misdemeanours
3. Felonies (the most serious)

Below is a description of some of the punishments that these different level of crimes attract.

What is the punishment for contraventions?

A contravention is any act or omission punishable under the laws or regulations, by one or both of the two following penalties:

- Custody for not less than twenty four hours and not more than ten days.
- A fine not exceeding one thousand Dirhams.

What is the punishment for misdemeanours?

A misdemeanour is an offence that is punishable by one or more of the following penalties:

- Confinement.
- Fine of more than a thousand Dirhams.
- Diyat (payment of 'blood money')

What is the punishment for felonies?

Felonies are crimes punishable by one of the following penalties:

- Diyat (payment of 'blood money')
- Temporary imprisonment
- Life imprisonment
- The Death penalty

Are the fines imposed by the criminal court payable to the victim?

Fines imposed by the criminal court are payable to the UAE government. They are not compensation for the victim (save for blood money claims), nor do they indicate the level of compensation to be afforded to the victim in any civil claim.

What is the practice, structure and scope of the criminal courts?

The Dubai criminal court is empowered to imprison, fine and acquit accused persons charged with criminal offences.

All proceedings before Dubai courts are conducted in Arabic. Accordingly, all the court pleadings will be drafted in Arabic and official Arabic translations of all the documents upon which parties seek to rely will be necessary.

UAE Court System

The court comprises of three stages:

1. The Court of First Instance
2. The Court of Appeal
3. The Cassation court (final appeal court)

The misdemeanour Court of First Instance consists of a single judge while the felony court comprises three judges.

Are the parties (offender and victim) required to attend the court hearings?

All persons accused of criminal offences must personally appear before the court if the offence for which they are accused of carries a prison sentence. Victims of crimes are not required to appear before the courts and are permitted to have their legal representatives attend the hearings on their behalf.

What happens in the court hearings?

1. The trial starts by the judge naming the parties to the case and the charge against the accused will be recited.
2. The public prosecution, as well as the victim (or the victim's legal representative), will subsequently

- present their respective claims at the first hearing.
3. The accused person will be asked whether he or she admits or denies the charges.
 4. If there is no admission of guilt the court will then set another hearing date to allow the accused to respond to the charges.
 5. If the accused person (legally summoned) fails to appear before the court on the day specified in the summons, the court will issue a judgment in absentia.

How are pleadings made before the court?

The victim and the accused have the right to file memoranda (or pleadings) which set out the claim, defence and all other evidence upon which the parties rely. Normally all pleadings submitted to the court are made by written submission, however the parties to the criminal action also have the right to present evidence by way of oral testimonies (i.e. from witnesses).

How long will the hearings take?

There will be a series of hearings approximately 2-3 weeks apart during which parties formally appear and file memoranda. The number of hearings and hence the time it will take to set the matter down for judgment will depend on the length of time taken to serve the defendants with notice of the court proceedings and the complexity of the issues and memoranda that are filed.

Will a court expert be appointed?

If the court believes there are any sufficiently technical areas in the case it will appoint an expert to review the case documents, meet with the parties and provide an expert report to the court.

When will a judgment be handed down by the court?

Once all the pleadings have been exchanged, oral testimonies of witnesses are heard and the expert report has been submitted where applicable, the court will set the matter down for judgment.

Are judgments of the First Instance Court subject to an appeal?

There is a right of appeal from the Dubai Court of First Instance to the Dubai Court of Appeal There is also a right of appeal from the Dubai Court of Appeal to the Dubai Court of Cassation.

The accused has 15 days to challenge the First Instance Court's judgment before the Appeal Court and 30 days to appeal against the Appeal Court's verdict before the Court of Cassation.

Can the victim file an appeal against the lower court's judgment?

Victims cannot formally appeal the criminal court's judgment per se as they are in principle represented by the state, (i.e. the prosecution) who will need to lodge an appeal on behalf of the plaintiff, unless the plaintiff files a joint civil action in the criminal proceedings.

Example of a Criminal Case in the UAE

In order to illustrate how the criminal process works, we provide details of a recent criminal matter handled by Al Tamimi involving the crime of defamation under UAE law.

Case Background

Under UAE law, a criminal complaint can be made against an individual for libel and slander under Articles 371 to 380 of the UAE Penal Code (Federal Law No. 3 of 1987).

The victim would also be able to bring a civil claim for damages resulting from the libellous actions under Articles 282 to 298 of the UAE Civil Code (Federal Law No. 5 of 1985).

It is possible to make a civil claim for defamation against an individual without obtaining a criminal conviction, however a civil claim for defamation is generally difficult to prove and a criminal conviction would provide strong evidence against the defendant upon which to base the civil action.

In the UAE, plaintiffs do not need to prove financial loss in a criminal complaint for defamation.

However, to establish a civil claim for damages, the plaintiff would need to prove financial loss as a direct result of the slanderous acts.

In this particular case Al Tamimi & Company successfully represented a company (the "Plaintiff") in a case against one of its ex-employees (the "Accused" or the "Defendant") for defaming the Plaintiff and its management through emails.

The Claim

In February 2014, the Plaintiff filed a criminal complaint before the Dubai police against its former employee for making defamatory and derogatory statements against the Plaintiff through emails sent to the Plaintiff, its employees and other members of the public.

The police transferred the complaint to the public prosecution for its review.

In March 2014, the Public Prosecution found that a crime was committed under Articles 1, 20 & 42 of the UAE Cyber Crimes Law (Federal Law No. 5 of 2012) and transferred the case to the Misdemeanour court.

Article 20 and 42 of the Cyber Crimes Law state that any person who, by using an information network or an information technology tool, insults a third party or attributes to the third party an incident that may make the third party subject to punishment or contempt by others shall be punished by imprisonment and a fine (between AED 250,000 and 500,000) or either of these penalties, and may be deported.

In June 2014, the criminal Court of First Instance found that the Defendant made derogatory and defamatory statements against the Plaintiff via electronic means (emails) and such slanderous statements contained in his communication would have made the Plaintiff subject to contempt.

The First Instance Court ordered the Defendant to pay a fine of AED 300,000 and to be deported from the UAE. The court also ordered that the Plaintiff be compensated in the civil claim (which was filed by the Plaintiff in the midst of the criminal proceedings).

The Defendant subsequently appealed the lower court's judgment before the Appeal Court. In September 2014, the Court of Appeal affirmed the lower court's judgment.

The Defendant further challenged the judgment before the Court of Cassation in October 2014 on the ground that the judgment entailed a misapplication of law, deficient causation and prejudiced his rights. The Defendant further argued that he did not intend to harm the Plaintiff's reputation and made the statements in good faith.

The Cassation Court rejected the Defendant's allegations of good faith and virtuous purpose in publishing such statements and upheld the Appeal Court's judgment.

Conclusion

Proceedings of criminal case in the UAE can be complex and daunting, especially for expats who may not speak Arabic. The above overview should assist those contemplating making a criminal complaint or those subject to one. Although the process may be very different to that found in other jurisdictions, many of the fundamentals will be the same, such as the right of the accused to present a defence and the right to appeal.