

# No Automatic Right to Compensation in the UAE for Illegal Administrative Decisions

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The court held that the irregularity or illegality of the administrative decision must be connected to substantive reasons for the management of the government body to be liable for compensation. Al Tamimi & Co. represented the Defendant in its successful appeal.

## Background Facts

The context of the case was that of a government employee who had been issued with a warning and then a termination notice, but without the proper procedure having been followed. In the UAE government employees are not subject to the Labour Law, but are instead subject to the Civil Service Law.

The Claimant, a UAE national, had progressed through the ranks of a government affiliated financial institution, reaching a senior management level as Head of the Finance Department. Concerns were raised about her performance and she was placed under investigation and suspended from work. She was given a formal notice that she was to comply with the relevant regulations, and then following an investigation her employment was terminated.

## First Set of Proceedings

The Claimant filed proceedings before the Abu Dhabi Court seeking an order that the warning on her employment file be removed. Following her termination, she filed a further claim for an order that the decision to terminate her be reversed (cancelled) and compensation paid, on the basis that:

- The reasons for the termination, even if correct, were not significant enough to warrant termination.
- There had not been a written investigation, as was mandated by the Civil Service Law.
- The decision to terminate was issued by a non-specialised person, in contravention of the Civil Service Law.
- The decision to terminate was made by the CEO, but he had not been appointed by the executive board, in contravention of the law establishing the government entity.

## Court of First Instance

Due to the nature of the case the Court of First Instance did not have jurisdiction and referred the issue that related to termination to the Court of Appeal.

## Court of Appeal

The Court of Appeal accepted the claim and ordered that.

## Court of Cassation

The Court of Cassation upheld the findings of the Court of Appeal that the termination decision was to be cancelled on the basis that the government body's management did not follow the correct legal procedure. The Court of Cassation however did state that although there was a procedural irregularity, had the proper procedure been followed it was clear that the Defendant would have reached the same decision (termination), and that the notices directed to the Claimant had been properly issued. Nonetheless, as a result of this ruling the Claimant was re-instated.

## **Second Set of Proceedings**

Following the Court of Cassation judgment, the Claimant requested the Court of First Instance to order the Defendant to remove the related administrative investigation from her file and award her compensation for damages suffered as a result.

As regards her claim for damages, she argued amongst other things that she had suffered substantial damages after being suspended from work for 75 days; losing out on her bonus and pay increments; being ordered in a demeaning tone to leave her office immediately; not being allowed to defend herself during the investigation; and then being re-hired in a different role that jeopardized her social stability and caused her embarrassment among her peers and damage to her professional reputation.

## **The Court of First Instance**

The Court of First Instance appointed an expert to look into the issues, and as a result of the report ordered the Defendant to pay compensation of AED 500,000 for material and moral damages. The Defendant appealed. The Claimant also appealed, seeking an increased award of AED 10 million.

## **The Court of Appeal**

The Defendant argued that the Court of First Instance had erred because it awarded compensation for wrongful termination when in fact the decision to terminate had been made due to a procedural defect, which does not necessarily entitle the Claimant to compensation as per settled court practice. Furthermore, the damage had been rectified by reinstating the Claimant and paying her dues from the date of termination to the date of reinstatement.

The Court of Appeal held that it was clear from the Defendant's investigation report that the formal notice was sent to the Claimant because the Claimant had adopted a hostile attitude towards her colleagues, had abused her powers by delaying certain financial transactions without justification, and had accused a colleague of tampering with financial documents. The notice was therefore properly served on her and so could not give rise to any claim for compensation.

The Court held that the claim for the bonus and increment was flawed because these were not entitlements, but subject to the Defendant's discretion based on the performance of the employee being 'good'. There was no evidence that the Claimant had fulfilled this criteria.

Finally, the Court held that compensation for an illegal administrative decision is only awarded where there is evidence that the irregularities substantially tainted the decision and damage had been caused by it. Compensation is not necessarily awarded simply because the decision had been reversed. The Court of Cassation had previously held that in this case, although there was a procedural irregularity, had the proper procedure been followed it was clear that the Defendant would have reached the same decision (termination), and that the notices directed to the Claimant had been properly issued. The Court of First Instance was therefore wrong to have awarded compensation. Any damage had been rectified by the Defendant when it reinstated the Claimant and paid the outstanding salary amounts. There could be no claim for moral damages, since the cancellation of the termination had exonerated her and was the appropriate remedy.

The Court of Cassation subsequently upheld this judgment.

## **Comment**

This judgment highlights that termination for an illegal administrative decision does not in itself give grounds for compensation. Substantive irregularities will need to be shown, together with causation and damage. In this case, there was no reasonable basis to support the action claiming compensation from the government body's management on the basis of a procedural illegality, even though the decision to terminate the claimant's employment was reversed. It is believed that this is the first precedent on this issue from UAE Court of Cassation. Previously Egyptian High Court judgments had to be referred to.