

Reasonable Ignorance of the Law May be an Excuse

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September 2016

A well-known legal principle declares that *'ignorance of the law excuses no one'*. This maxim is used by legal systems throughout the world to impose constructive knowledge of the laws of the land upon those to whom such laws apply. Although exceptions have historically been made – for example by the Canadian courts in respect of hunters who were ignorant of a change of law that was made during the hunting season when they were hunting in the wilderness and, therefore, incommunicado – this generally means that a person cannot escape liability for violating a law on the basis that the content of that law was in fact unknown to that person.

In the United Arab Emirates, the principle is codified in Article 42 of Federal Law No. 3 of 1987 (as amended) (“Penal Code”), which provides that *'Ignorance of the provisions of this law excuses no man.'*

In cases other than those to which strict liability applies, the absence of a requisite state of mind, or intention, will often mean that a person will not in fact be culpable for an act that is prohibited by law, due to the requirement for a certain *mens rea* or ‘guilty mind’. However, where a person does intend to do the act that is criminalised by law, and so long as all the required elements are fulfilled, criminal intention may be proven by implication and a conviction should follow.

In a case before the Abu Dhabi Cassation Court in May 2016, the Court appears to have decided a case based on whether a person, who was unaware of legal requirements imposed upon him as a person subject to the jurisdiction of UAE law, could be guilty of an offence in circumstances where his lack of awareness was due to the failure by the State to properly have performed its duties under the law, rather than on the basis of whether the person held an intention to violate the law.

Background

A Pakistani man, who was returning from holiday to Abu Dhabi airport in the summer of 2015, carried AED246,000 in cash with him into the UAE. He was stopped with the cash, which he had not declared to Customs, and was prosecuted for his failure to make the required declaration.

The Court of First Instance convicted the man of an offence under the UAE’s anti-money laundering law – Federal Law No. 4 of 2002 (as amended) (“AML Law”) – and issued a sentence of imprisonment for one year and deportation.

The man appealed to the Court of Appeal, which upheld the conviction. He then took his case to the Court of Cassation, which overturned the lower Courts’ decisions.

Article 6 of the AML Law states:

In pursuance of the procedures of disclosure adopted by the Central Bank, whoever enters into or exits

from the State shall disclose all currencies, tradable financial instruments, high-value stones and precious metals.

In 2011, in accordance with its duty under this provision, the UAE Central Bank increased the limit on the amount of undeclared cash that travellers can bring into the UAE from AED40,000 to AED100,000 (or the equivalent in other currencies), by issuing a Regulation on 9 January 2011. The Regulation was published in Federal Gazette No. 518 on 28 February 2011 to come into effect 6 months thereafter (1 September 2011) ("Declaration Regulations").

The appellant in this case was, therefore, carrying more than the amount above which declaration is required and he should have declared to Customs officers the fact that he was carrying an additional AED146,000 above the AED100,000.

Court of Cassation

The appellant told the Court of Cassation that he did not know he was breaking the law. His legal representative argued that there was no intention to commit a crime and his client was ignorant about the disclosure rules.

The Court of Cassation referred in its decision to three elements of the Declaration Regulations, which imposed the following requirements on the Federal Customs Authority (there are 9 in total):

- There should be enough signs, in a sufficient number of languages, at airports, seaports and land border crossings, which show the value above which cash must be declared.
- The Customs staff should have enough disclosure forms to be provided to arriving and departing passengers who want to disclose the money they are carrying.
- In case there is no disclosure and the authorities catch a passenger who has sums of money which are more than the allowable limit, the relevant customs officer should make enquiries regarding the reasons behind not disclosing the same.

The Court of Cassation found, with reference to the above reasons, that the Federal Customs Authority had not followed the procedures required of it by the Declaration Regulations and the case was referred back to the court of appeal for the matter to be determined by a different panel.

Comment

The Declaration Regulations make it clear that 'bringing to the UAE cash amounts... of [a] value exceeding [AED100,000] is not prohibited, the purpose, rather, is to register details of such amounts, to make use of such information in case of receipt of reports / international requests for assistance claiming that funds have been obtained from unlawful sources, or the traveller concerned is conducting money laundering, terrorist financing or other crimes.'

The criminality alleged in this case, therefore, was not the fact that the appellant brought a certain amount of cash into the UAE. Rather, it was his failure to declare the amount in excess of AED100,000. The Court of Cassation appears to have addressed the question of whether such failure was reasonable in the circumstances.

At least two points arise out of the Article 42 principle that ignorance excuses no man:

- The prosecution in this case was founded upon the AML Law, which does not contain any similar principle imposing knowledge of its provisions on the public:
- Although it is arguable that this legal principle could be applied to any criminal offence, the fact that it is

specifically mentioned in the Penal Code at least provides an argument in cases based on other legislation in which the principle is not mentioned, that it should be limited to offences contained in the Penal Code.

- The well-known doctrine that ignorance of the law is no defence, upon which Article 42 is based, presumes that the law in question has been properly promulgated:
- Whilst it cannot reasonably be argued that the AML Law has not been properly promulgated, the ignorance in this case related to the Regulations that the Central Bank was required to issue in accordance with Article 6 of the AML Law.
- Although those Regulations have been promulgated through the Federal Gazette, the specific requirements imposed upon the Federal Customs Authority were found by the Court not to have been sufficiently adopted, whether in the time specified (prior to September 2011) or at all.

Further, the full text of the requirement from the Declaration Regulations that was third in the list highlighted by the Court of Cassation is as follows:

In case no declaration was made and cash amounts... their value exceeding the said ceiling were discovered, the customs officer in charge should inquire about the reasons for not declaring. If the said officer found the reasons unconvincing he should seize and transfer the amount... to the Attorney-General to initiate legal proceedings against the concerned person as per provisions of Article 18 of [the AML Law].

Article 18 of the AML Law criminalises intentionally refraining from disclosing information that it is necessary to disclose, in violation of Article 6.

The reference to the third point of the Court of Cassation's reasoning (the requirement of Customs officials to make enquiries of the reasons for a failure to declare excess cash) suggests that such enquiry might not have been made on this occasion and that it cannot, therefore, have been established that the appellant 'intentionally' refrained from making the required disclosure.

In this case, it appears that the appellant's ignorance of the Regulations was found to be reasonable, even though they had been properly promulgated, as the Federal Customs Authority had not taken the steps that were envisaged by the Central Bank as being reasonable to make travellers aware of their duty, namely (i) to place signs with the effect of notifying persons that they are required to declare excess amounts of cash; (ii) to enquire of the reasons for non-disclosure, and (iii) to offer to travellers the forms for making disclosure.

The reasoning of the Court of Cassation does not appear to address the appellant's legal representative's argument that the appellant did not intend to commit the offence. If accepted, this would also have resulted in acquittal.

Conclusion

It appears, from this Court of Cassation decision, that the principle that ignorance of the law excuses no man is not to be strictly applied in the UAE and is in fact subject to a test of reasonableness. That is a demonstrably fair approach, especially in circumstances such as the current case, where an organ of the State was found by the Court to have failed to properly implement provisions that another organ of the State had decided were reasonable and necessary to apply.