

Speedy Enforcement of Domestic Arbitral Awards: Analytical Study under the Emirate Civil Procedures Law

*Bakr A.F. Al-Serhan*¹

Associate Professor, head, Private Law Department, University of Sharjah,
United Arab Emirates

E-mail: balseghan@sharjah.ac.ae

Abstract

In arbitration, an arbitrator delivers a decision that needs to be enforced in order to be of value to the parties. Emirate law regulates two types of judgment enforcement: normal and speedy. Normal enforcement pertains to judgments that can be enforced if deemed non-appealable before the Court of Appeal. Speedy enforcement refers to judgments that can be enforced even when still appealable. Emirate law states that arbitral awards are subjected to ‘speedy’ or rapid enforcement rules. This article concludes that a clearer regulation regarding this issue will be highly welcomed.

Keywords

speedy enforcement – arbitration – arbitral awards – Emirate law

1 Introduction

Arbitration is one of the most important means of alternative dispute resolution (ADR). This method of dispute resolution, which is generally contractual, allows the parties involved in a dispute to seek a tribunal of their choice according to the conditions they find suitable. This is to say that, as a general rule, the parties can stipulate an arbitrator’s gender, profession (engineer, lawyer), etc. The ability to select an arbitrator is advantageous since it allows the parties to

¹ PhD and MA in Law: University of Leeds.

the dispute to decide which qualities they might consider most beneficial to their cause and to whom they would entrust the outcome of the arbitration.

Furthermore, arbitration has been found more advantageous in cases involving dispute resolution for other reasons: namely, parties can decide where and when they choose to meet, can determine which procedures they wish the arbitrators to follow, and can call for complete secrecy regarding the details and outcome of their dispute. Moreover, one of the most important advantages of arbitration is its rapidity. Compared to litigation, the aspect of time consumed, or briefness thereof, has thrust arbitration into the lead as a dispute resolution process. Regulation of arbitration, considered a noteworthy advantage, is embodied in the Emirate Civil Procedures Law.

Arbitration as a means of dispute resolution stands on the fact that an arbitrator, generally acting as a judge appointed by the parties, concludes by issuing a decision on the case. This is referred to as the 'arbitral award', which in many ways is similar to a decision reached by a court of law. In order to prove effective and be of value, an arbitral award must be enforceable, especially when one party fails to voluntarily and willingly comply to the outcome. Thus enforcement of an arbitral award is an important issue for arbitration as a means of dispute resolution. This is to say, if arbitral awards cannot be enforced, then disputants will seek other means of dispute resolution. Therefore, the Emirate Civil Procedures Law has regulated this issue by adopting more than one rule to regulate the steps that can be taken in order to forcibly and compulsorily enforce either domestic or non-domestic (foreign) arbitral awards. However, this article will focus on regulations regarding domestic awards.

The Emirate Civil Procedures Law stipulates that domestic arbitral awards can only be enforced if ratified and confirmed by courts of law. Furthermore, the Emirate law states that an arbitral award is subjected to rules for speedy enforcement. However, the law does not give more details in this regard, although it regulates speedy enforcement of court decisions in a more detailed way. Therefore, this article will first address the rules for speedy enforcement that are applicable to courts decisions and then assess whether they can be applied to arbitral awards according to the regulations adopted by the Emirate Civil Procedures Law. Accordingly, Sections 2 and 3 will deal with the meaning and types of rapid enforcement of court decisions, as a general rule. Section 4 will address the applicability of speedy enforcement rules to domestic arbitral awards.

2 Meaning of Speedy Enforcement of Court Decisions

To begin, it is important first to clarify the meaning of speedy enforcement of court decisions, which can be illustrated as follows. Emirate law states

that a court decision may not be enforced by the Compulsory Enforcement Department, established in the Courts of First Instance,² unless that judgment is deemed non-appealable before the Court of Appeal³ where an appeal constitutes the normal way to challenge decisions issued by the Courts of First Instance. This also finds its reasoning in the fact that the Emirati judicial system stands on the principle of the “two-step adjudicating process”.⁴ Furthermore, the legislator appears to presume that, since an opponent is allowed to challenge a decision from the Court of First Instance before the Court of Appeal, it is more likely to have this decision revoked at this step, if it is defected. Therefore, a court decision is not considered eligible for enforcement before it reaches this stage (*i.e.*, is deemed non-appealable).⁵

Therefore, Emirate law rules that a court decision is not to be enforced until it is deemed non-appealable before the Court of Appeal. Yet, Emirate law rules a decision illegible to be brought before the Court of Appeal, and as a result becomes non-appealable in many situations. In some cases, a decision is considered non-appealable from the outset where the law so states. This is mainly seen in trivial or low-value cases. The Emirate Civil Procedure Law states that decisions by the First Instance Partial Courts are non-appealable as a general rule in cases involving ≤20,000 UAE Dirhams.⁶

2 See Art. 219, Emirate Civil Procedures Law, which is Federal Law No. 11 of 1992.

3 See Art. 227/1, Emirate Civil Procedures Law. See the Federal Supreme Court Decision No. 137/13, dated 14 Dec. 1991, published on the website of the Ministry of Justice at: <http://www.elaws.gov.ae/ArLegislations.aspx>.

4 This principle means that, as a general rule, an opponent is eligible—when referring to courts of law—to present his case before two courts: the Court of First Instance and the Court of Appeal. This principle, adopted by the Emirate Law, is of great importance since it enables the parties to bring their cases before more than one court, which helps in reaching more accurate decisions by allowing the Court of Second Instance (Court of Appeal) to correct the judgments of the Court of First Instance. This principle also urges the Court of First Instance to take utmost care when delivering its judgments since it feels that it is monitored by the Courts of Second Instance (*i.e.*, the Court of Appeal). For more on this principle, see F. Wali, *Abwaseet on Civil Adjudication Law*, (Cairo: Cairo University Publications and University Books, 2001/2002), pp. 207 *et seq*; M. Qandeel, *Alwajeez in Litigation and Adjudication within the UAE Emirate Civil Procedures Law*, (UAE: al-Afâq al-Mushriqah li-n-Nashr\Brighter Horizon Publishers, 2010), pp. 44 *et seq*; Federal Supreme Court Decision No. 603/29, dated 11 March 2009, published on the website of the Ministry of Justice, *Ibid*.

5 See N. Omar, *Abwaseet on Compulsory Enforcement*, 2nd edn. (Alexandria: Dâr al-Jâmi'ah al-Jadidah\ New University Publications House, 2001), pp. 64 *et seq*.

6 See Art. 30, Emirate Civil Procedures Law.

Furthermore, decisions by the Courts of First Instance are non-appealable in cases such as the extinction of time limits assigned for appeal without appealing. It is also established that a case can only be appealed once before the Court of Appeal. In such cases, compulsory enforcement of a decision is allowed and executed when such a requirement has been fulfilled (non-appealability requirement), which is called “the ordinary enforcement of judgments”.⁷ In contrast, the law admits an exception to this rule referred to as the “speedy enforcement of judgments”.⁸ This exception means that a decision can be enforced even if it is still open for appeal or has already been brought before a Court of Appeal. This exception stands on the fact that in some cases the winning party need not wait until the judgment in his favour is deemed non-appealable to enforce it. The law acknowledges that it is sometimes harmful for an opponent to wait until his judgment is considered non-appealable. In other cases, the law acknowledges that—leaving such a decision for the court to decide—it is less likely that the decision will be revoked or nullified by the Court of Appeal. In other situations, the parties may agree on a rapid enforcement of the decision delivered on their case. Accordingly, the three types of rapid enforcement of court decisions (legal, judicial and contractual) can be briefly illustrated as follows.

3 Types of Speedy Enforcement of Court Decisions

As mentioned above, the three types of speedy enforcement of court decisions in Emirate law are legal, judicial and contractual, which can be briefly illustrated as follows.

7 See A. Hindi and N. Omar, *Compulsory Enforcement*, (Alexandria: Dār al-Jāmi‘ah al-Jadīdah\ New University Publications House, 2002), pp. 35 *et seq.*; M. Shehatah, *Compulsory Enforcement within the United Arab Emirates Civil Procedures Law*, 1st edn. (Dubai: Dubai Police Academy, 1990/1991), pp. 68, 69; A. Turki, *Illustration of Compulsory Enforcement*, 2nd edn. (Cairo: Dār al-Nahda, 2011), pp. 172 *et seq.*

8 The rapid enforcement of judgments is defined by some scholars by saying that it is the possibility to start enforcing a writ of execution before the completion of the conditions needed for its execution. See Omar, *supra* note 4 at 127 *et seq.* Also see M. Aashor, *Compulsory Enforcement in the United Arab Emirates*, (UAE: United Arab Emirates University Publ., 1995/1996) pp. 116 *et seq.* Also see M. Hrajah, “The Periodic Compulsory Enforcement Disputes in Civil and Commercial Matters”, (Cairo: Dār al-Thaqafah, 1987), pp. 75 *et seq.* Also see N. Abdu Allah, *The Law of Compulsory Enforcement*, 1st edn. (Şana‘ā, Yemen: Assadiq Centre, 2003/2004), pp. 68 *et seq.*

3.1 *Legal Enforcement of Court Decisions*

This type of speedy enforcement of court decisions refers to cases that are determined by the provisions of law. Here there is no discretion for the court, and the decision given by the court is eligible for rapid enforcement by virtue of the law. Yet, Emirate law refers to three types of court decision that are eligible for rapid enforcement by virtue of the law.

3.1.1 Orders on Petitions

The Emirate Civil Procedures Law states that a judge can issue orders on the petitions adduced by the parties. These orders depend only on what is contained in the parties' petitions. These orders are, as a general rule, issued in the absence of the other party (*i.e.*, in the absence of the defendant). The orders on petitions do not address or deal with the subjective rights of the disputants. On the contrary, orders on petitions deal with a temporary, periodic, situation that needs to be rapidly and promptly addressed in order to protect the subjective right. One example might be a court order to prevent a debtor from travelling outside the country, where he might flee to avoid performing his obligations. Another example of court orders on petitions is the confiscation or seizure of the debtor's property in order to prevent him from disposing of it in a way that might affect his creditors' rights. Such orders are subjected to rapid execution by virtue of the law, since such benefits will be lost if they are adjourned until deemed non-appealable. Furthermore, the law states that the only way to challenge such orders is by applying a grievance against them before the judges issuing them, as a general rule.⁹ The decision in such a grievance can be appealed before a Court of Appeal. Yet, the Law states no time limits for the grievance against the orders. As a result, the Law states that such orders are subjected to speedy enforcement.¹⁰

3.1.2 Decisions on Expeditious Matters

Emirate law recognises that there are cases in which time is crucial, and, therefore, decisions reached in such cases need to be enforced rapidly. One example might be a court decision involving urgent alimony needed by a wife or child

9 The regulation of both issuing these orders and challenging them is incorporated in Arts. 140-142, Emirate Civil Procedures Law.

10 For more reading on this case of rapid enforcement, see A. Abdel Fattah, *The Rules of Compulsory Enforcement in the Egyptian Civil Procedures Law*, 4th edn. (Cairo: Dār al-Nahda, 2002), pp. 190, 191. Also see A. Abul Wafa, *The Procedures of Compulsory Enforcement in Civil and Commercial Matters*, 10th edn. (Alexandria: Munshā'at al-Ma'ārif/Knowledge Institution Publisher, Dār al-Jāmi'ah al-Jadīdah, n.d.) pp. 84, 85.

from a husband or parent. Enforcing such a decision cannot be adjourned until it is deemed non-appealable. Therefore, the law states that decisions concerning matters that cannot be delayed (expeditious matters) are to be rapidly enforced by virtue of the law. Nevertheless, such matters are to be determined by the court.¹¹

3.1.3 Decisions Relating to Insolvency

Emirate Commercial Law states that all the decisions involving insolvency are included within the speedy enforcement rules. This is due to the fact that when a merchant is deemed insolvent, his financial and monetary rights need to be gathered and liquidated in order to pay debts to the creditors. Therefore, such measures—for all similar cases—need to be handled swiftly.¹²

3.2 *Judicial Enforcement of Court Decisions*

The second type of speedy enforcement of decisions is judicial, where the law specifies cases in which the court has discretion whether to bestow speedy enforcement on the judgment. Moreover, the court is not to decide whether a decision is eligible for speedy enforcement unless an application has been made by the concerned party to this end.¹³ Speedy judicial enforcement cases determined by the law can be put in two categories. The first category includes cases that require speediness in execution due to either the nature of the dispute or the needs of the parties. The second category includes cases that depend on the fact that decisions by the Courts of First Instance rest upon robust evidence, which makes it less likely for the Court of Appeal to change its findings. Both categories can be briefly addressed as follows.

3.2.1 Nature of the Dispute

Emirate law states that a court of law can call for rapid enforcement of its judgments in the following cases:

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- 11 See Art. 228/a, Emirate Civil Procedures Law; for more on this case, see Abdel Fattah, *supra* note 9 at 189, 190. Also see Omar, *supra* note 4 at 135. Also see A. Tulbh, *Compulsory Enforcement and its Subjective and Periodic Disputes*, (Alexandria: Al-Maktab al-Jāmi'ī al-Ḥadīth/The New University Office Publisher, 1996), pp. 285 *et seq.*
 - 12 See Art. 665, Emirate Commercial Transactions Law; Turki, *supra* note 6 at 220.
 - 13 The application should be made before the Court of First Instance, since it is made in order to enforce the judgment as soon as it is delivered by that court. See Abdel Fattah, *supra* note 9 at 194. See also A. Hindi, *The Fundamentals of Enforcement*, 2nd edn. (Alexandria: Dār al-Jāmi'ah al-Jadidah/New University Publications House, 2006), pp. 40, 41.

- (1) *Commercial cases*: The law gives the court the right to include in its judgment a rapid execution clause, if the case is commercial. This is due to that fact that it is historically agreed upon that commerce requires speediness.¹⁴
- (2) *Cases concerning labours' wages and compensation*: It is also agreed that labours do depend on work to earn their livelihood. Therefore, if a case is related to labours' wages or compensation resulting from labour, the court is entitled to allow the speedy enforcement of its decision.¹⁵
- (3) *Cases favouring a creditor involved in a compulsory execution process*: According to Emirate Law, a creditor is allowed to launch a "compulsory execution process" against his debtor to get his money owed. In this case, if the latter (the debtor) disputes the former (the executor) on a matter concerning the execution process, the law says that a court—if the judgment reached in the disputed matter is in favour of the executor—may incorporate a rapid execution clause in its decision. This is due to the fact that the court may find that the dispute concerning the execution process is only raised and brought before it to hinder and delay that process. Therefore, such a decision is eligible for rapid enforcement or execution as the court deems necessary.¹⁶
- (4) *Cases where postponement might be harmful*: The law establishes a general case, which says that a judge has full discretion to impose rapid enforcement upon his decision, whenever he believes that delaying execution until his judgment is deemed non-appealable will be harmful to the party who won the case.¹⁷

3.2.2 Decisions Built on Robust Evidence

Emirate Law recognises situations in which the decision reached rests on evidence or circumstances that makes it less likely that it will be altered or refuted by the Court of Appeal. Such decisions, the law states, are eligible for rapid enforcement upon a court's discretion. This, as adopted by the law, can be seen in the following cases:

14 See Art. 229/1, Emirate Civil Procedures Law.

15 See Art. 229/5, Emirate Civil Procedures Law. See Hindi, *supra* note 12 at 52 *et seq.*; Abul Wafa, *supra* note 9 at 90.

16 See Art. 229/4, Emirate Civil Procedures Law; Shehattah, *supra* note 6 at 93 *et seq.*

17 See Art. 229/7, Emirate Civil Procedures Law. See Abdel Fattah, *supra* note 9 at 195 *et seq.*; Abul Wafa, *supra* note 9 at 94 *et seq.*; A. Abdu Allah, *The Law of Compulsory Enforcement*, 1st edn. (Sana'a, Yemen: Assadiq Centre, 2003/2004), p. 79.

- (1) *Judgments built on a debtor's confession*: In many cases a debtor confesses and admits before the court that he owes money or has an obligation towards the creditor and as a result—depending on that confession¹⁸—a judgment is made in the case. In such situations, Emirate Law states that the court is entitled to allow the rapid execution of its judgment.¹⁹
- (2) *Judgments supporting previous non-appealable decisions*: Emirate Law states that a court is allowed to grant rapid execution for its decision, if that judgment is delivered as a result or in support of a previously given judgment.²⁰ The condition required to establish such a case is that the previous judgment must be non-appealable. This is, most likely, due to the fact that the Emirate law supposes that the latter judgment will hardly be changed or revoked by the Court of Appeal, since it supports a non-appealable judgment. One example might be the case where a court of law issues a decision—which was (or has become) non-appealable before the Court of Appeal—to the effect that one person is liable for damages, without determining the due amount. If the Court of First Instance later issued another judgment depending on (supporting) the previous judgment, determining the amount of the payable damages, the latter judgment is eligible for rapid execution if the court sees fit.²¹
- (3) *Judgments supporting previous decisions, where the latter are rapidly enforced without bailment*: As a general rule, Emirate law gives the court the right—when ordering rapid execution of its judgment—to stipulate that the beneficiary party (executer/ creditor) to provide bailment to assure and guarantee the damages which may affect the other party if the Court of Appeal revokes the speedily executed judgment.²² The law, as a result, states that if the court allows rapid enforcement of its judgment without ordering bailment, then, if another decision is reached by the court in support of the previous decision, the court is allowed to bestow the rapid execution status on the latter decision.²³ This case is adopted

18 The law states that this case apply as long as a confession is made by the debtor, even if he (the debtor), after confessing has alleged that he has paid his debts fully or partially, or disputed the amount of that debt. The most important thing for this case to apply is to have the judgment built upon that confession. See Article 229/2 of the Emirate Civil Procedures Law. See Aashor, *supra* note 7, pp. 125, 126.

19 See Abul Wafa, *supra* note 9, pp. 86 *et seq.*; Abdel Fattah, *supra* note 9, pp. 201 *et seq.*

20 See Article 229/3 of the Emirate Civil Procedures Law.

21 See Abdel Fattah, *supra* note 9, pp. 198 *et seq.*; Abul Wafa, *supra* note 9, pp. 87, 88; Aashor, *supra* note 7, p. 124.

22 See Article 228/2 of the Emirate Civil Procedures Law.

23 *Ibid.*

due to the fact that, if the court allows the rapid execution of its judgment without bailment, the court is, most likely, convinced that that judgment will not be revoked by the Court of Appeal. Therefore, if another judgment is given depending on that judgment, the latter judgment will be eligible for speedy enforcement if the court so decides.²⁴

- (4) *Judgments built upon undisputed formal or informal documents*: It is well known that documents provide the strongest type of evidence.²⁵ As a result, the law states that, if a decision is made depending on such evidence, wherever the concerned party did not refute or challenge the given evidence in the manner stated by the Law, the court is allowed to bestow a speedy enforcement clause on its decision.²⁶ However, one should note here that the Law stipulates that formal documents can only be challenged by claiming that they have been forged (*i.e.*, counterfeited).²⁷ While, on the other hand, it is sufficient for the opponent, against whom the non-formal documents were adduced, just to deny them.²⁸
- (5) *Judgments, which are built upon undeniably informal documents, or upon challenged or non-challenged formal documents, concerning property possession, evacuation of tenants, or revocation of tenancy agreements*: This is a special case adopted according to the subject matter of the judgment. The Law states that if a judgment is concerned with previous matters and that the decisive adduced evidence was in writing (documents), whether informal (not denied by the opponent),²⁹ or formal (even if challenged but found sound and safe by the court), the court, in such cases, is eligible to grant a rapid enforcement clause to the decision it has reached.³⁰

24 See Hindi, *supra* note 12, pp. 44 *et seq.*; Abdel Fattah, *supra* note 9, pp. 198 *et seq.*; Abul Wafa, *supra* note 9, pp. 87, 88; Aashor, *supra* note 7, p. 124

25 See, *e.g.*, Article 36/1 of the Emirate Evidence Law that, as a general rule, prevents the parties from calling witnesses in the case to refute documented (written) evidence.

26 See Article 229/3 of the Emirate Civil Procedures Law. See Aashor, *supra* note 7 at 123, 125; Abdu Allah, *supra* note 7 at 77-78; Hindi, *supra* note 12 at 46 *et seq.*; Abdel Fattah, *supra* note 9 at 200 *et seq.*

27 See Article 23/1 of the Emirate Evidence Law.

28 *Ibid.*

29 The law so adopts this case. According to Article 229/6 Emirate Civil Procedures Law, if a party challenges the informal written evidence but the court dismisses his bleedings and depends on that evidence in deciding the case, the court is not entitled to grant rapid execution to that party according to this case.

30 See Abdel Fattah, *supra* note 9 at 195; Aashor, *supra* note 7 at 126, 127.

3.3 *Contractual Enforcement of Court Judgments*

The Emirate Civil Procedures Law implies that the parties are allowed to agree on bestowing the feature of speedy enforcement upon the judgment of the Court of First Instance. The law implicitly allows this only after the decision of the court has been delivered.³¹ Such a thing is likely to be seen where the parties agree to the decision and abandon the idea of an appeal. In other words, if a party agrees to a judgment and accepts its findings, and, therefore, gives up appealing against that judgment, the latter judgment will be eligible for speedy enforcement.³²

4 **Applicability of Speedy Enforcement Rules to Domestic Arbitral Awards**

As a first step in clarifying the applicability of speedy enforcement rules to arbitral awards, it is important to first identify the meaning of the domestic enforceable arbitral award, along with addressing the applicability of the courts' judgment speedy enforcement rules to this award. This can be dealt with as follows.

4.1 *Meaning of Domestic Enforceable Arbitral Awards*

An arbitrator is eligible to issue different types of decisions; for example, he may decide whether to admit evidence or to adjourn sessions or meetings with the parties. In short, an arbitrator can issue procedural, preliminary decisions and may also give decisions on the subject matter of the dispute.³³ It is only the decision that addresses the subject matter of the dispute—which is referred to as the arbitral award—that is eligible for compulsory enforcement. However, another question that must be answered is whether an arbitral award is considered domestic or non-domestic. Arts. 212/4 and 236 of the Emirate Civil

31 Article 230/1 of the Emirate Civil Procedures Law.

32 See and compare Abul Wafa, *supra* note 9 at 79 *et seq.*; Turki, *supra* note 6 at 214.

33 For more on the types of decisions seen within the arbitration scope, see H. Hadad, *Challenging the Arbitral Award Delivered on Private International Disputes by Nullification*, (Alexandria: Dār al-Fikr al-Jamīī, n.d.), pp. 25 *et seq.* See also M. Al'inzi, *Nullification of International Arbitral Award*, (Beirut: Al-Halabī Legal Publ., 2006), pp. 55 *et seq.*; K. Hasan, *Nullification of Arbitral Award*, (Cairo: Dār al-Nahda, 2010), pp. 61 *et seq.*

Procedures Law both state that a foreign (non-domestic) arbitral award is an award that is given outside the United Arab Emirates.³⁴

4.2 *When Is an Arbitral Award Eligible for Enforcement?*

Once an arbitrator delivers his decision on the subject matter, one must ask whether such an award is eligible for enforcement and whether it can be subjected to appeal? According to the Emeriti law, an arbitral award is non-appealable. In other words, the parties are not allowed—if no agreement to the contrary is concluded—to refer the matter decided by an arbitrator to another authority (*i.e.*, tribunal or court of law). However, parties are allowed to apply for nullity (nullification) of the decided upon award, as will be seen below. Furthermore, an arbitral award cannot be enforced without a court's ratification. This can be briefly illustrated as follows.

4.2.1 Nullification of Arbitral Awards

Once again, the Emirate law, as a general rule, prevents a party from bringing a case already decided by an arbitrator before another tribunal. Therefore, the decision made by an arbitrator (the arbitral award) is non-appealable.³⁵ However, a party may ask the court to revoke the award.³⁶ The law allows certain specific reasons for nullification of an award as follows:

- (1) A party can apply for nullification of an arbitral award due to both the voidance and the non-existence of the arbitration agreement. If a party

34 Art. 212 of the Emirate Civil Procedures Law states that “an arbitral award must be delivered in the UAE, or otherwise the rules designated for the arbitral awards delivered in a foreign country will be applied to it”. Rule 236 of the Emirate Civil Procedures Law states that “The previous rule applies to the arbitral awards delivered in a foreign country . . .”. Furthermore, Art. 235 of the Emirate Civil Procedures Law addresses the court judgments delivered in a foreign country. For more on when to consider an arbitral award domestic or non-domestic (international) see A. Al-Ahdab, *International Arbitration*, Part 3, (Beirut: Nofal Institute, 1990), pp. 1 *et seq.* H. Hadad, *Challenging the Arbitral Award Delivered on Private International Disputes by Nullification*, (Alexandria: Dār al-Fikr al-Jami‘ī, n.d.), pp. 41 *et seq.* Also see Hasan, *Ibid.*, pp. 89 *et seq.*; N. Ottoman, *Criteria of International Arbitration*, paper presented at the Proceedings of the International Arbitration Conference, (United Arab Emirates University, 2008), published on <http://slconf.uaeu.ac.ae/papers/n1/naser%20osman.pdf>.

35 Art. 217/1 of the Emirate Civil Procedures Law.

36 Art. 216 of the Emirate Civil Procedures Law.

- proves that the agreement leading to arbitration was invalid, or does not exist at all, a court may nullify the arbitral award.³⁷
- (2) A party can apply for the nullification of the arbitral award due to the excess of time limits. The Law states that if an arbitration agreement is determined with time limits and such limits are not respected, a party may apply for the nullification of the arbitral award.³⁸
 - (3) A party can apply for the nullification of an arbitral award due to the non-determination of the subject matter of the dispute in the arbitration agreement. An arbitration agreement, according to the Emirate Civil Procedures Law, must contain determination of the dispute that needs to be resolved by arbitration. Otherwise, a party can apply for the nullification of the delivered arbitral award. Yet, the Law allows the parties, if they failed to have this issue determined in the arbitration agreement, to determine it in their pleadings before the arbitrators.³⁹ In both situations if the parties failed to determine the subject matter of the dispute, parties can ask for the nullification of the award.
 - (4) A party can also apply for the nullification of an arbitral award if the arbitrator breaches or exceeds the parties' contractual assigned limits. The parties, in their arbitration agreement, may draw the lines for an arbitrator, if such lines were disregarded or trespassed by an arbitrator, a party may apply for the nullification of the award.⁴⁰
 - (5) A party may also apply for the nullification of an arbitral award if the arbitrators were not correctly appointed: arbitrators must be appointed in consistency with law. It is to be noted here that the Law allows the parties to stipulate certain conditions in arbitrators. Therefore, wherever the appointment of arbitrators is found to be contrary to the terms of law or agreement, a party is allowed to apply for the nullification of the arbitral award.⁴¹
 - (6) A party may also apply for the nullification of an arbitral award due to a defect either in the award itself,⁴² or in the procedures leading to the

37 Art. 216/1/a of the Emirate Civil Procedures Law. See N. Omar, *Arbitration on National and International Civil and Commercial Matters*, 2nd edn. (Alexandria: Dār al-Jami'i, 2004), p. 263.

38 *Ibid.*, p. 266.

39 Art. 203/3, Emirate Civil Procedures Law. On this issue, see Dubai Court of Cassation No. 265/2007, Session 3 Feb. 2008, published on www.mohamoon-ju.net.

40 Art. 216/1/a, Emirate Civil Procedures Law. See Dubai Court of Cassation No. 268/2007, Session 19 Feb. 2008, published on www.mohamoon-ju.net. *Supra* note 38.

41 Art. 216/1/b, Emirate Civil Procedures Law.

42 Art. 216/1/c, Emirate Civil Procedures Law.

award.⁴³ An arbitral award may be incorrect in itself, like if it did not contain the arbitrators' signature. Furthermore, the procedures leading to the issuance of an arbitral award may also be defected in a way that affects the award, like in the case where only one out of three arbitrators assigned for mission decided the matter.

- (7) Finally, and as a general rule, a party may always apply for the nullification of an arbitral award if it contradicts public policy in the UAE.

4.2.2 Court Confirmation Requirement

It is mentioned above that an arbitral award cannot be challenged before an appellate court. It can only be challenged in one way, which is the nullification according to one of the above-mentioned reasons. On the other hand, the Emirate Law states that an arbitral award can be enforced only if ratified and confirmed by the court. Such a requirement is, more likely, due to the fact that the Emirate law believes that an arbitral award is made by an ordinary person (*i.e.*, by a person who has no formal position or authority). Therefore, an arbitral award cannot be treated as a court judgment. As a result, it can be said that an arbitral award, under the Emirate Law, cannot be enforced until it is ratified and confirmed by a court of law.⁴⁴

Furthermore, a relevant question is given to the effect that what kind of authority the ratification or confirmation court has towards an arbitral award? Does such a court re-assess the award in terms of its correctness? Does it deal with it as an appellate court, or does it automatically ratify it? Another related question is which one of the courts of law is competent in ratifying arbitral awards? As an answer to the given questions, it can be said that the Emirate courts agree—in more than one decision—that a court's authority towards an arbitral award when adduced for ratification does not extend to re-assessing it. A court can only scrutinise and examine it externally to check its enforcement capability. This includes checking whether it was delivered in the form of a judgment and whether it contains the requirements needed in a judgment. The court also checks whether such an award contradicts public policy. A court can in no way check the correctness of the award. Still, a court is not at all eligible to re-address or deal with the subject matter of the dispute addressed by the award.⁴⁵

In contrast, in answer to the other question, which is concerned with determining the competent court for such task, it can be said that the law does

43 *Ibid.*

44 Art. 215/1, Emirate Civil Procedures Law.

45 See the Federal Supreme Court Decision No. 92/2003, dated 8 June 2003; *supra* note 2.

not name a certain court for such a mission. However, the Emirate Law states that the court authorised to confirm an award is the court of law that had the jurisdiction to deal with the dispute that was decided by arbitration. In other words, the law states that the court that was deprived of deciding the case as a result of referring it (the case) to arbitration is the competent court to ratify and confirm the arbitral award. Moreover, the law states that this court may be a first instance court or an appellate court (*i.e.*, a Court of Appeal).⁴⁶

4.3 *How Applicable Are the Rules of Speedy Enforcement to Arbitral Awards?*

As an answer to the given question, the following five points should be taken into consideration.

First: As mentioned above, an arbitral award is non-appealable as a general rule. Such a thing means that such an award is eligible for execution or enforcement from the outset. In other words, a point of view may be given to the effect that an arbitral award—since it is non-appealable before an appellate court—needs not be rapidly enforced, as it can be normally enforced.

Second: The previous view collides with the fact that the Law states that an arbitral award, in order to be enforced, needs court confirmation. In other words, an arbitral award can only be enforced if ratified by the court.

Third: Emirate law adopts an important, yet confusing provision, which is embodied in Art. 212/3 of the Emirate Civil Procedures Law, stating that “arbitral awards are subjected to the speedy enforcement rules”. However, more than one point can be raised concerning this provision, which is highly significant.

This provision, on one hand, supports the first given view. This is due to the fact that this provision says, refers to, the arbitral award itself. It is obvious that this provision does not refer to the court decision. Yet, on the other hand, this provision contradicts the core of the first view when it talks about speedy enforcement of the award. Strictly speaking, the first view is given to the effect that since an award is non-appealable before the Court of Appeal, an award is subjected to normal, not rapid, enforcement. Therefore, when the provision says that an award is subjected to speedy enforcement rules, it implicitly says that such an award is subjected to appeal and is in no way a final decision. This is one confusing aspect of the provision. Another point concerning this provision can be given to the effect that this provision ignores the fact that an award, in order to be eligible for enforcement, needs to be ratified and confirmed by a court of law.

⁴⁶ See Arts. 213/1 and 213/2, Emirate Civil Procedures Law.

Fourth: Thus the question is what really does apply to the arbitral award and how is it possible to put together all the provisions and rules adopted by the Emirate Civil Procedures Law concerning its enforcement? As an answer to the latter question, several points can be presented as follows.

It can be said that an arbitral award, in Emirate law, always needs court confirmation and ratification in order to be eligible for enforcement. As a result, the question that needs to be answered is how to interpret the provision of Art. 212/3 of the Emirate Civil Procedures Law, which states that “arbitral awards are subjected to the speedy enforcement rules”. As an answer, it can be said that this provision can be interpreted to the effect that the Emirate legislator, in this provision, meant to say ‘the court judgment ratifying and confirming an arbitral award, and not the arbitral award itself, is subjected to speedy enforcement rules’. For more clarification, the situation can be read as follows. When an arbitral award is delivered by an arbitrator, this award is put before a court of law for conformation.⁴⁷ However, as mentioned above, the court of competence to confirm and ratify an award is either a Court of First Instance or a Court of Appeal.⁴⁸ If ratified by a Court of Appeal, then talking about speedy enforcement within the scope of arbitral awards will be irrelevant. This is due to the fact that the court judgment ratifying the arbitral award will be final and cannot be subjected to appeal before the Court of Appeal. Such a situation means that the judgment can be normally, and not speedily, enforced. On the other hand, talking about speedy enforcement within the scope of arbitral awards will be relevant where the ratification and conformation of such an

47 It should be noted that Emirate law differentiates between two types of domestic arbitral awards in terms of ratification: ‘court-reached’ arbitral awards, and ‘non-court-reached’ arbitral awards. ‘Court-reached’ arbitral awards are awards reached via an arbitration made through the court. This is seen when the parties bring their case before a court and agree afterwards to refer that same case to arbitration and the court handling the case participates in that by supporting their agreement. In this type of arbitration, the law stipulates that the arbitrator, not the parties, should put—for ratification—his reached award before the very same court that dealt with the case before referring it to him. This should be made within a certain time limit. While, on the other hand, non-court-reached arbitral awards are awards reached as a result of an arbitration made outside the court. In this type of arbitration, the award reached by way of such arbitration can be ratified and confirmed by the court only after an application made by the parties, who can ask for that (the award confirmation) under no time limits. See Arts. 213/1 and 213/3, Emirate Civil Procedures Law.

48 Jurisdiction will be held for the Court of Appeal, if the parties agreed to go for arbitration after bringing their case before this court (Court of Appeal). See Art. 213/2, Emirate Civil Procedures Law.

award is made by the Court of First Instance. This is because the court judgment ratifying the arbitral award will not be final and, as a result, can be subjected to appeal before the Court of Appeal. Yet, the Emirate Civil Procedures Law refers to three situations in which a Court of First Instance judgment ratifying and confirming an award cannot be challenged before the Court of Appeal, and as a result such a judgment can be normally enforced. These three situations are as follows:⁴⁹

- (1) *If the parties agreed not to appeal:* The law allows the parties, either in advance or after the judgment is made, to abandon their right to challenge the Court of First Instance's judgment before the Court of Appeal.⁵⁰
- (2) *If the amount at stake (subject matter of the dispute) is worth $\leq 20,000$ UAE Dirhams:*⁵¹
It is most likely here that the law tends not to engage the Court of Appeal with cases of trivial or small monetary value.⁵²
- (3) *If the arbitrators were eligible to conclude conciliations:* The Emirate law states that the parties can agree to enable the arbitrators to decide their case not according to legal rules but according to the principles of natural law and rules of justice. In this type of arbitration, an arbitrator's decision looks more like a settlement. Yet, this settlement is imposed by an arbitrator rather than agreement between the parties. This type of arbitration is called 'Conciliation Arbitration'.⁵³

In these three types of cases, the Emirate Civil Procedures Law states that the Court of First Instance's decision ratifying and confirming the arbitral award is not to be challenged before the Court of Appeal. As a result, a court decision in these cases can be normally enforced.

To conclude, Art. 212/3 of the Emirate Civil Procedures Law, which states that "arbitral awards are subjected to the speedy enforcement rules", is

49 It is to be noted that in depth dealing with these three types of cases lies beyond the scope of this research, which is mainly concerned with the rapid enforcement of arbitral awards issue. Addressing these cases can be fully made in a separate study.

50 See Art. 217/3, Emirate Civil Procedures Law. See the Federal Supreme Court Decision No. 417/18, dated 1 Nov. 1998; *supra* note 2.

51 It is worth noting that the Emirate Civil Procedures Law was amended recently. The amount—that used to prevent appeal against the Court's decision confirming an award—before amendment was $\leq 10,000$ UAE Dirhams. The new amount was introduced by Law No. 10 of 2014. This law was put into force in March 2015.

52 See Art. 217/3, Emirate Civil Procedures Law.

53 *Ibid.*

interpreted to the effect that rapid enforcement rules, mentioned in this provision, are connected to the court judgment ratifying the award rather than the award itself.

Fifth: However, the question that needs to be answered, concerning Art. 212/3 of the Emirate Civil Procedures Law, is what exactly the Emirate legislator means with the provision included in this Article? In other words, what does the statement 'arbitral awards are subjected to the rapid enforcement rules' exactly mean? Does it mean that the court judgment confirming and ratifying an arbitral award is subjected to the rules governing speedy enforcement of other court judgments? In other words, does it mean that it is subjected to rules classifying the rapid enforcement types to judicial, legal and contractual? Or does this provision give a different meaning? As answer to the given question, the two following interpretations of this provision can be put as follows:

(1) One considerable interpretation can be given to the effect that speedy enforcement rules that apply to other court judgments apply to the court judgment ratifying an arbitral award. This point of view makes it possible to rapidly enforce the judgment ratifying an award if one of the cases applying to other court judgments is found. This is to say that the court judgment ratifying an arbitral award can be eligible for rapid execution in the two previously illustrated judicial cases, which include both the category of cases requiring speediness in execution and the category of judgments that are built upon robust evidence. These categories, as addressed above, include commercial cases, labour-related cases, cases where the judgment is built on the debtor's confession, cases of judgments supporting earlier non-appealable ones, etc. This view excludes the legal cases of rapid execution, which are orders on petitions, judgments on matters of rapid nature requiring general authority intervention, and judgments on insolvency issues. This is due to the fact that deciding on these matters is not subjected to arbitration. Therefore, they can be only addressed by courts of law.⁵⁴ Furthermore, it is pertinent to say that contractual speedy enforcement of court judgments do apply to the court judgment ratifying and confirming an arbitral award, since in both cases the law allows the

54 The Emirate law states that arbitration is only allowed in cases where the parties can conclude conciliation. See Art. 203/4, Emirate Civil Procedures Law. Furthermore, as a general rule, arbitrators have no authority to give orders to official authorities. See Abul Wafa, *supra* note 9 at 147 *et seq.*; A. Abdul Twab, *Arbitration Agreement and Related Bleedings*, (Alexandria: Dār al-Jāmi'ah al-Jadidah\New University Publications House, 2009), pp. 96 *et seq.*

parties to abandon their right to appeal the judgment before the Court of Appeal.⁵⁵

(2) Yet, the previous interpretation leads to what can be referred to as redundancy and unproductive repeatability. This is due to the fact that the law has clearly addressed the cases in which a court judgment can be speedily executed and enforced. Therefore, there will be no need for the legislator to adopt another separate provision stating that a court judgment ratifying an arbitral award is subjected to the rules that apply to every other court judgment.

As a result, and on the other hand, the provision, Art. 212/3 of the Emirate Civil Procedures Law can be interpreted in a different logical way that avoids its superfluous nature and redundancy, and which gives the utmost benefit for arbitration. Accordingly, the provision in question, Art. 212/3, can be interpreted to mean that the court judgments ratifying and confirming arbitral awards are, by virtue of law, subjected to rapid enforcement.

In other words, wherever a court of law supports and ratifies an arbitral award, the judgment given can be speedily enforced. This is to say that, if such a judgment is delivered by a court of first instance, a party must not wait until that judgment is deemed non-appealable before the Court of Appeal to have it enforced. This interpretation agrees with the privileges sought from arbitration, since it is agreed that one of the greatest advantages of arbitration is speed.⁵⁶ Therefore, interpreting the provision embodied in Art. 212/3 in the latter way supports and maintains such a privilege. Yet, in all cases, a clearer provision is highly welcomed from the Emirate legislator.

5 Conclusions

To conclude, this article has dealt with the speedy enforcement of domestic arbitral awards in the Emirate Civil Procedures Law. Speedy enforcement of judgments means that a judgment can be enforced despite the fact that it still can be challenged before the Court of Appeal. Speedy enforcement of judgments is adopted as an exception to the general rule, which states that

55 Abul Wafa, *ibid.*, pp. 79 *et seq.*

56 For more on arbitration privileges and advantages, see M. al-Tehwee, *Arbitration in Civil and Commercial Matters*, (Alexandria: Dār al-Jāmi'ah al-Jadīdah\New University Publications House, 1999), pp. 4 *et seq.*; M. Aashor, *Arbitration* (Mansoura: Dār al-Fikr wa l-Qānūn\Intellect and Law House, 2010), pp. 8 *et seq.*

judgments cannot be enforced in the Emirate Civil Procedures Law until they are deemed non-appealable before the Court of Appeal. This is due to the fact that a judgment reached by the Court of First Instance can be changed and revoked if challenged before the Court of Appeal. As a result, according to the law, it is better to wait until such a judgment is regarded final (non-appealable) to have it enforced. Furthermore, it is found that the rules of speedy enforcement were originally put for court judgments. The law adopts three types of speedy enforcement cases: legal speedy enforcement, which is established by virtue of law; contractual speedy enforcement, which depends on the parties' agreement; and judicial speedy enforcement, which is decided by courts of law when certain situations and requirements are established. It is also found that the Emirate law regulates the enforcement of arbitral awards. It states that an award cannot be revised or re-assessed by any other tribunal. A party, when not satisfied with an arbitral award, can only apply for its nullification. The law stipulates that certain reasons are found to allow the nullification of an award. However, the law states that an award needs court confirmation in order to be enforced. A court of authority to confirm an arbitral award is in no way considered as an appellate court towards that award. A court which confirms an award has no right to re-assess the findings of the award. The Emirate law contains a provision stating that 'arbitral awards are subjected to the rapid enforcement rules'. This provision was subjected to analysis. It was dealt with in more than one interpretation. The article concludes, and recommends, that the Emirate law re-address this issue by giving a clearer regulation in a way that magnifies and supports arbitration as an important rapid and expeditious alternative dispute resolution.

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