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Supporting Organisational Justice through a Legal Framework for Performance Appraisal in the United Arab Emirates: Management Case and Comparison with the French System

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Abstract

The article outlines the regime for performance appraisal, as it applies to organisations operating in an emerging economy like the United Arab of Emirates (UAE). To this end, the management literature on performance appraisal is reviewed, as a strategy to pursue organisational justice and productivity in an equitable work environment. An analysis is also supplied of the regulatory framework of a civil law system with which many Arab jurisdictions bear historical vicinity—that of France—to ascertain a possible frontier of further legislative development. The paper situates performance appraisal—and the need for regulation—in the context of managerial strategies to enhance organisational justice, in order to align the goals of companies and their employees. The existing regime for performance appraisal in the UAE reveals a less than comprehensive legislative infrastructure, compared to that of France. For this reason, the paper advances suggestions for its further development.

Keywords – *Performance Appraisal, Organisational Justice, Human Resources.*

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1. Introduction

In a highly competitive business environment, cultivating a constructive relationship between employees and their organisation should be of prime concern. A constructive relationship between employers and employees has been shown to help enhance productivity: to this end, performance appraisal is a particularly useful tool. ‘Appraisal’ means ‘to set a value for something’, whereas ‘performance’ refers to the way something or someone is functioning. It follows that, at its most fundamental, employee performance appraisal refers to the activity of setting a value for the output of an employee. When a high level of integrity, justice, and fairness can be built into a performance appraisal scheme, this means interested parties—and particularly employees—might recognise it as a sound undertaking, accept it as objective, and relate to it as to a reasonable evaluation exercise. When this occurs, a virtuous cycle is set in motion, whereby employees’ productivity is preserved or even enhanced, to the benefit of the overall performance of the organisation.²

The term ‘performance appraisal’ describes a business practice, and would not customarily be expected to come up in legal documents and judicial arguments. The process of setting a value for and rating employee performance is variously described in management literature as ‘performance management’, ‘performance contract’, ‘performance appraisal’, ‘performance assessment’, and ‘employee evaluation’, among others. Against this background, ‘performance appraisal’ is the term we will consistently employ in this paper. A positive performance appraisal can be understood as an attestation of ‘effectiveness’. In economic terms, this has been often likened to ‘competitiveness’—which portrays performance appraisal as a framework for supporting the efforts of an organisation in meeting the pressures of competition.³ The lack of ‘performance appraisal’ as an established category in legal language invites a second terminological clarification. ‘Performance appraisal’ does not automatically cue a legal obligation. However, when it forms part of an agreement, then it may also give rise to legally enforceable obligations. Hence, in order to give contractual coverage to performance appraisal, the

² W.J. Heisler, M. Hannay, A Question of Ethics: An Examination of Stakeholder Perspectives in the Performance Appraisal Process, in *Journal of Leadership, Accountability and Ethics*, 2015, vol. 12, no. 4, pp. 31–45.

³ S.D. Noisette, *Performance et droit du travail*, Ph.D. thesis, University of Aix-Marseille, 2018, p. 24.

latter is at times formalised in an agreement, beyond mere internal documents or spreadsheets measuring employee deliverables.⁴

These clarifications set the stage for the examination undertaken in this paper, concerning the legal issues that accompany the performance appraisal process, in the context of the United Arab Emirates (UAE). While the UAE is still developing an appropriate legislative framework, performance appraisal has for example received greater attention in the legal systems of many EU countries. This piece will especially refer to the French treatment of performance appraisal, in light of the vicinity that French legal categories still bear with the private laws of many Arab countries, through the mediation of the Egyptian Civil Code.⁵

In order to explore the legal aspects of performance appraisal, Section 2 begins by providing background on this business process, illustrating the management case for it in bolstering employee motivation, job satisfaction and engagement, and ultimately employee effectiveness within the organisation. This section also makes explicit the connection between fairness in performance appraisal procedures and employees' perceptions of organisational justice and integrity. Section 3 introduces the existing Emirati legal framework for approaching controversies arising in the conduct of performance appraisal procedures. Section 4 contrasts available legal options in the Emirati legal system with the French approach, based on comprehensive regulation of performance appraisal through dedicated contractual clauses and collective performance agreements. Finally, Section 5 comes back to the UAE, pointing to possible strategies for implementing a more reliable framework in support of business performance appraisal procedures, in order to enhance employees' perception of organisational justice. This is followed by a conclusion that summarises the main steps of our argument, and sets out findings and recommendations for business managers, policymakers, and legislative authorities.

⁴ W.B. Zondi, *The Concept of Performance Appraisal and Requirements for its Successful Implementation*, in *International Journal of Economic Perspectives*, 2017, vol. 11, no. 2, pp. 638–644.

⁵ W.M. Ballantyne, *The New Civil Code of the United Arab Emirates: A Further Reassertion of the Shari'ah*, in *Arab Law Quarterly*, 1986, vol. 1, no. 3, 245–64, p. 247. See also I.M. Jadalhaq, M.E.H. El Maknouzi, *Reading UAE Contract Law through the Lens of Islamic Jurisprudence: A Case Study on the 'Extraneous Cause' Exception in the UAE Civil Code*, in *Global Jurist*, 2019, vol. 19, no. 2, p. 4.

2. Fairness in Performance Appraisal: Employee Motivator and Driver of Organisational Productivity

Human resource departments customarily use a management tool called 'performance appraisal' to align individual employees' goals to the organisation's goals.⁶ Its primary use is for assessing employees' outputs against the objectives, skills, and attitude demanded by their position. The importance of this instrument lies with a multitude of benefits it yields for both the individuals involved and the organisation to which they belong. Primarily, it is meant to spark employee motivation and activate their efforts towards achieving the company's desired goals. This is achieved by providing benchmarks, against which to measure expectations and to incentivise employees to 'go the extra mile'.⁷ Performance appraisal may also be linked to reward schemes, whereby employees may obtain recognition for exceeding benchmarks.⁸ It also feeds a range of other human resource management processes, such as: career path and succession planning, talent acquisition, fast track programs, promotions, demotions, management development programmes, and salary and incentive schemes. Finally, performance appraisal processes produce a documentary trail that might be called upon in the presence of grievance and appeals procedures, and when contractual conflicts arise between an organisation and its employees.⁹

Performance appraisal schemes that are explicitly linked to motivation are often well received by employees. In this respect, the different motivational theories in the field of human resource management provide blueprints for how to design performance appraisal schemes, in such a way as to generate effects on employee performance, using a vast array of

⁶ G. Martin, E. Farndale, J. Paauwe, P.G. Stiles, Corporate governance and strategic human resource management: Four archetypes and proposals for a new approach to corporate sustainability, in *European Management Journal*, 2016, vol. 34, no. 1, pp. 22–35.

⁷ J. Hiltrop, C. Despres, Benchmarking the performance of human resource management, in *Long Range Planning*, 1994, vol. 27, no. 6, pp. 43–57.

⁸ A. Reizer, Y. Brender-Ilan, Z. Sheaffer, Employee motivation, emotions, and performance: a longitudinal diary study, in *Journal of Managerial Psychology*, 2019, vol. 34, no. 6, pp. 415–428.

⁹ F. Nickols, Performance appraisal: Weighed and found wanting in the balance, in *Journal for Quality and Participation*, 2007, vol. 30, no. 1, pp. 13–16.

practical methods, techniques, and tools.¹⁰ For example, the performance appraisal technique known as ‘management by objectives’ (MBO) is the practical transposition of a motivational theory called ‘goal setting’. This theory contends that goals that are specific and challenging results in motivated employees, more so than goals that are not specific: when goals are specific, measurable, attainable, realistic, and time-bound (‘SMART’), it is likelier that employees’ motivation for higher achievement might come into play.¹¹ It follows that, from a managerial point of view, stretching targets can be one approach for triggering motivation and increasing productivity. At the same time, objectives should be mutually agreed between employees and their managers so that they remain realistic.

Employees also rely on their organisation maintaining an internal justice system to abolish performance appraisal errors and promote integrity at the every level.¹² Organisational justice unfolds along four possible dimensions: procedural, distributive, interactional, and corrective. Procedural justice touches on the fairness of the performance appraisal process, resulting in an outcome perceived as accurate in terms of the final performance score. Distributive justice speaks to concerns for consistency and proportionality in the allocation of resources, such as performance-related pay bonuses, promotions, or increments. Interactional justice is reflected in feedback that is perceived as fair, constructive, and accurate. In particular, it consists of two sub-factors. The first is interpersonal justice: the degree to which employees are treated with politeness, dignity, and integrity; the second is informational justice, and captures the production of accurate and thoughtful feedback, reviews, and other such forms of performance commentary by the appraiser. Finally, corrective justice relates to undertaking remedial action, in the face of mistakes occurring in the performance appraisal process.¹³

¹⁰ H. Aguinis, *Performance Management*, 3rd edition, Pearson, Boston, 2013. See also H. Aguinis, H. Joo, R.K. Gottfredson, *Performance management universals: Think globally and act locally*, in *Business Horizons*, 2012, vol. 55, no. 2, pp. 385–392.

¹¹ E.A. Locke, *Motivation through conscious goal setting*, in *Applied and Preventive Psychology*, 1996, vol. 5, no. 2, pp. 117–124.

¹² P.W. Thurston, L. McNall, *Justice perceptions of performance appraisal practices*, in *Journal of Managerial Psychology*, 2010, vol. 25, no. 3, pp. 201–228.

¹³ While corrective justice isn’t usually included in categorisations of the different forms of organisational justice, the ability to intervene to redress perceived unfairness is one of the dimensions of organisational justice that is most impacted by the presence of an appropriate regulatory framework. For a comprehensive discussion of the corrective dimension of organisational justice, see T. Nasidic, *La main juste des managers: les*

Although the different forms that organisational justice may take are correlated, they produce distinct impacts on employees' behaviour. For instance, when it comes to performance appraisal, procedural justice nurtures employees' confidence in the performance appraisal scheme itself. Instead, distributive justice influences the level of overall job satisfaction; interactional justice facilitates employee satisfaction with the appraisers, and finally corrective justice mitigates the negative effects on employee performance of an appraisal outcome that's perceived as unjust.¹⁴

Performance appraisal that's perceived as accurate generates high levels of job satisfaction and motivates employees to be more productive, to develop their skills, and thereby to grow. Rich, constructive, and in-depth feedback also contributes significantly to employees' overall perception that mirrors the reality they experience. When it comes to communication of rich and comprehensive feedback, performance appraisal is perceived as a just and fair exercise.¹⁵ At the same time, performance results are also used to categorise, promote, demote, reallocate—and even fire—employees. Therefore, performance appraisal exercises constitute a hazard for organisational justice when they are undertaken, for example, by self-interested managers whose primary focus lies in their personal benefit without paying due attention to subordinates' developmental goals.¹⁶ Supervisors bring a decisive contribution to employees' overall perception of fairness in the course of performance appraisal, when they exercise their management prerogative of evaluating subordinates' performance. The decision concerning final performance scores lies within the

stratégies visibles et invisibles de justice corrective des managers et leurs antécédents, Ph.D. Thesis, HEC Paris, 2008.

¹⁴ See J.A. Colquitt, On the dimensionality of organizational justice: A construct validation of a measure, in *Journal of Applied Psychology*, 2001, vol. 83, no. 3, pp. 386–400; S. Taneja, R. Srivastava, N. Ravichandran, Consequences of performance appraisal justice perception: A study of Indian banks, in *IUP Journal of Organizational Behavior*, 2015, vol. 15, no. 3, pp. 33–57; T. Nasidic, La main juste des managers: les stratégies visibles et invisibles de justice corrective des managers et leurs antécédents, *op. cit.*, p. 148.

¹⁵ T.T. Selvarajan, P.A. Cloninger, Can performance appraisals motivate employees to improve performance? A Mexican study, in *International Journal of Human Resource Management*, 2012, vol. 23, no. 15, pp. 3063–3084.

¹⁶ S. Evans, D. Tourish, Agency theory and performance appraisal: How bad theory damages learning and contributes to bad management practice, in *Management Learning*, 2017, vol. 48, no. 3, pp. 271–291.

discretion of the supervisor's judgement; still, because of the cognitive nature of the judgement itself, errors are to be expected.¹⁷

Supervisors approach performance appraisal differently to other non-supervising employees. While the latter experience performance appraisal primarily in terms of its impact on their careers, the former are more concerned with documenting the process. In addition, one way employees become sceptical of performance appraisal is when they notice supervisors' tendency to rotate high scores amongst subordinates, such that they effectively enforce turns in benefitting from financial increments or promotions. Such a practice affects employees' perceptions of performance appraisal fairness, since it shows that final scores are not based on well-defined measures that can be accounted for through objective feedback. In a 2005 survey of federal employees from 59 federal agencies in the US, almost 16% of respondents answered 'yes' to the question: 'During the past year, did you rate any employee higher or lower than you believe the employee deserved?' This answer is significant because it reports supervisors' own admission of unfair judgements in performance appraisal, which, in turn, reverberates on employees' reception of final scores.¹⁸ Caution not to inflate financial budgets can also backfire by skewing employees' final performance appraisal scores. This is because organisations may then implement a forced ranking ratio distribution—particularly when performance results are linked to salary increments, promotions, or any other adjustment with a financial impact. This is another possible way in which employees might become dissatisfied with their score, as they would expect a different rating from the one made possible through a forced distribution quota.¹⁹

¹⁷ The following is a non-exhaustive list of possible causes of judgement errors: comparison and contrasting with other employees' scores, the tendency to cluster scores together, first impressions, gender bias, or bias due to other inappropriate distinctions.

¹⁸ Y.C. Lin, J.E. Kellough, Performance appraisal problems in the public sector: Examining supervisors' perceptions, in *Public Personnel Management*, 2019, vol. 48, no. 2, pp. 179–202.

¹⁹ W.J. Heisler, M. Hannay, A question of ethics: An examination of stakeholder perspectives in the performance appraisal Process, *op. cit.*; see also H. Aguinis, H. Joo, R.K. Gottfredson, Why we hate performance management—and why we should love it, in *Business Horizons*, 2011, vol. 54, no. 6, pp. 503–507.

3. When Results Are Perceived as Unfair: Review Mechanisms and the Emirati Context

Ideally, performance appraisal should unfold through a transparent, clear, sound—and above all just—process that meets supervisors' and employees' expectations. This entails spelling out a systematic, structured procedure that helps maintain consistency and fairness in appraisal results. Furthermore, goals should be discussed and agreed upon directly, between the subordinate and his/her direct supervisor, at the beginning of each performance cycle. Thereafter, the supervisor continues to play a significant role in mentoring his/her subordinates and making available to them suitable opportunities for skills training, as well as resources, tools, and useful motivational practices to prevent potential drops in their performance. An ongoing feedback process should also be in a place for employees to share their impressions, worries, reactions, and thoughts, as well as for supervisors to offer guidance. This would minimise the risk of unexpected results showing up only at the end of the performance cycle. Finally, since performance appraisal results are usually linked to remuneration, promotion, and demotion decisions, the process should take into account any legal requirements put down by the country in which a company operates.²⁰

Despite this ideal scenario, not every company has a sound and transparent performance appraisal system in place, and this can lead to disagreements. For example, disagreements can arise as a consequence of poor communication on the part of managers; of refraining from providing ongoing feedback to employees; of performance goals that aren't sufficiently specific, clearly spelled out, mutually agreed upon, or that are unattainable due to factors beyond employees' direct control. In turn, this might lead to unsatisfactory performance appraisal results, and ultimately to termination of an employee's contract. When they are in place, internal review procedures can help address those cases when less than satisfactory performance might be ascribed to causes beyond employees' control. Typically, these internal procedures require discussion of employees' concerns with their line manager; if a conclusion is not reached between them, then appeals are usually escalated to the line manager's superior, the HR department, and finally to the top manager, whose decision will be final.²¹

²⁰ W.B. Zondi, *The concept of performance appraisal and requirements for its successful implementation*, *op. cit.*

²¹ G. Dessler, *Human Resource Management*, 15th edition, Pearson, New York, 2017.

External review mechanisms of performance assessments are equally necessary to incentivise managers to provide detailed feedback to their subordinates, and thereby avoid disagreements connected to performance appraisal. This is one of the reasons why the legal systems of many mature economies in the Western world have developed rules to govern the relationship between employers and employees in connection with performance appraisal. Moreover, pressure from formal groups, trade unions, and other legal entities generates additional incentives for organisations to produce accurate performance appraisal documentation—as doing otherwise would leave them exposed to employees’ lawsuits upon allegation of discrimination in decisions concerning promotion, reallocation, hiring, and removal on the basis of biased performance scores.

The United Arab Emirates (UAE) is located in the Middle East, precisely on the Western Coast of the Arab Gulf. Culturally, it shares many common traits with other Arabic Gulf countries. It is also one of the fastest growing business environments,²² as a consequence of the drive towards economic diversification.²³ At the same time, this is coupled with the UAE government’s drive to increase wellbeing, to the point of establishing a Ministry for Happiness and Wellbeing. This invites attention towards concerns around employee motivation, job satisfaction, and overall wellbeing, in connection with their perception of accurate performance appraisal on the job.²⁴ On this basis, the UAE Federal Decree Law No. 11 of 2008, on Human Resources in the Federal Government (‘UAE Human Resources Law’), contains a dedicated chapter—no. 5—on performance appraisal, which stipulates that employee output ought to be assessed primarily on the basis of defined objectives and competencies. This law binds all federal government entities, in connection with their procedures for allocating financial and non-financial rewards. Instead, private companies operating in the UAE are bound by the Federal Labour Law No. 8 of 1980 (‘UAE Labour Law’), which differs from the UAE Human Resources Law, in that it does not explicitly regulate performance appraisal. This means that the

²² N. Michael, Y. Reisinger, J.P. Hayes, The UAE’s tourism competitiveness: A business perspective, in *Tourism Management Perspectives*, 2019, vol. 30, pp. 53–64.

²³ A.Z.E. Ahmed, The role of diversification strategies in the economic development for oil-dependent countries the case of UAE, in *The Business & Management Review*, 2015, vol. 6, no. 2, pp. 207–216.

²⁴ A. Reizer, Y. Brender-Ilan, Z. Sheaffer, Employee motivation, emotions, and performance: A longitudinal diary study, *op. cit.*

adoption and design of performance appraisal schemes is left entirely to the discretion of individual companies, insofar as the private sector is concerned: this means that while large multinationals, as well as most medium-sized companies, have a performance appraisal system in place, the majority of small companies don't.

Finally, performance appraisal is a culturally bound technique, developed in the Western world and adopted widely, including in Middle Eastern countries. This might generate tensions with the role local cultures play—in the Arab world and the Middle East—in shaping human resource practices. For example, some commentators have suggested that bias in performance appraisal might occur as a result of a custom called '*wasta*', which is found in Saudi Arabia and also rooted in the culture of the wider Arab world.²⁵ 'Nepotism' is the nearest English translation of '*wasta*', which however cues a Middle Eastern culture of undertaking important decisions collectively, also by taking into consideration group memberships that define people's identities. These considerations evoke tension between Western approaches to performance appraisal and local culture. For instance, while Western managers might stick primarily to the level of an individual's performance—setting objectives and providing regular feedback—managers in the Arab world might also take into account the relationships, connections, and networks of their employees. This constitutes an additional source of pressure on their decisions, which might, in turn, bias their feedback and employees' final scores.²⁶

4. A Comparative Look at Performance Appraisal Regulation: The French Approach

We have just seen how the UAE Labour Law does not explicitly regulate performance appraisal with respect to private companies, despite the fact that this practice—supported by contractual requirements that employees achieve specific goals—is widespread. Having said that, different rules apply to civil servants working for federal agencies, for whom

²⁵ S. Al Harbi, D. Thursfield, D. Bright, Culture, *wasta* and perceptions of performance appraisal in Saudi Arabia, in *International Journal of Human Resource Management*, 2017, vol. 28, no. 19, pp. 2792–2810.

²⁶ M. Branine, D. Pollard, Human resource management with Islamic management principles: A dialectic for a reverse diffusion in management, in *Personnel Review*, 2010, vol. 39, no. 6, pp. 712–727. See also P. Budhwar, K. Mellahi, Introduction: Human resource management in the Middle East, in *International Journal of Human Resource Management*, 2007, vol. 18, no. 1, pp. 2–10; S. Al Harbi, D. Thursfield, D. Bright, Culture, *wasta* and perceptions of performance appraisal in Saudi Arabia, *op. cit.*

performance appraisal is mandatory in order to justify any increases in remuneration, pursuant to chapter 5 of the UAE Human Resources Law. If UAE legislation does not ordinarily interfere with performance appraisal agreements between employees and private employers, French legislation has instead moved towards a distinctive regulatory approach—which forms an important yardstick for comparison to imagine possible pathways for legal development in UAE Labour Law.

For this reason, this section introduces the French regulatory framework on performance appraisal. It does so in two steps. First, it clarifies the legal nature of the performance appraisal condition that employers might include in contractual agreements, in the light of the general theory of obligations and contracts, as well as of the judicial principles that have been put forth to aid interpretation and fill out legislative *lacunae*. Second, the section examines the regulatory impact of the newly introduced ‘collective performance agreement’, which has been allegedly introduced to allow for greater ‘flexibility’ in the employment relationship, by enabling dynamic adaptation of contractual provisions—including through the introduction or revision of performance appraisal procedures—to changing market circumstances.

4.1. The Performance Appraisal Condition in Employment Contracts

In their employment contracts, employers might include a clause to the effect of adding the achievement of specific thresholds (to be verified through performance appraisal) to the basic obligations of their employees. Such thresholds may be spelled out in quantitative or qualitative terms, as laid out in the contractual clause. This type of contractual clause is known in French Law as a ‘performance appraisal’ clause or as a ‘provided-targets-are-met’ condition.

Employees are contractually bound to perform a particular type of work in exchange for their remuneration. However, this type of clause may also be added at a later time to the employment contract, in order to align the employee’s work more closely to the needs of the organisation, so that the organisation might achieve envisioned results and improve its overall performance. Performance appraisal clauses in the employment contract offer an instrument through which management might try to amend the standards to which they wish to hold employees, at any time, in the light of the company’s changing strategic priorities. The presence of one such clause would make those standards obligatory, to the point that the employment contract would be liable for termination without compensation, save for legally required severance pay. This type of

condition is deemed to be valid, since the employer has the right to define goals for the employee's performance. However, it is not exempt from judicial review of the reasons underpinning contractual amendment, and of the extent to which those goals should be afforded priority.²⁷

By signing a contract of employment with a clause stating 'provided targets are met' and annotating on the page where the clause appears, or on any other contractual document, the employee expressly and unequivocally manifests his/her will to accept the professional goals assigned to him/her by the employer. The employee also binds him-/herself to achieve these goals in conformity with specific parameters, especially concerning duration and unilateral review by the employer. Pursuant to Article 1231-1 of the French Civil Code, the goals that the employee undertakes to meet constitute an 'obligation of result'. This obligation is not limited to the nature of the goals to be achieved, but also extends to the agreed timeframe for achieving them. In view of this, a failure on the part of the employee to meet those goals amounts to a contractual fault. This means that the employee is, technically, in breach of contract when his/her work is found in the context of a performance appraisal exercise.

Although the 'provided-targets-are-met' clause is an expression of the parties' contractual freedom and derives from its binding character, employees might often challenge its validity. Predictably, this happens when the employer decides to terminate the employment contract on the basis of inadequate results on the part of the employee. This is where courts are usually asked to adjudicate the validity of including this type of condition in the context of an employment contract, or of other related documents.²⁸ This is how the French judiciary has been invited to clarify the basic principles pertaining to performance appraisal conditions.

In a case adjudicated by the Paris Court of Appeals, a seller of industrial equipment had been held liable for low demand for the brand, which he was in charge of marketing, and his dismissal for this reason had been upheld. The French *Cour de Cassation* reversed this decision, based on the absence of contractual documents obliging the employee to achieve the goals desired by the employer, as well as on the absence of proof that the brand's inability to break into the market could be attributed to the employee. Hence, the court held that the dismissal of the employee lacked

²⁷ A. Mazeaud, *Contrat de travail: exécution*, in *Répertoire de droit du travail* Dalloz, 1993, vol. C, no. 39–39s, p. 18.

²⁸ Y. Aubrée, *Contrat de travail: clauses particulières*, in *Répertoire de droit du travail* Dalloz, 2017, vol. C, no. 116–117, pp. 36–37.

a valid or substantive reason.²⁹ In another court case, a coach had been dismissed by his football team on the basis of gross fault, in view of the poor results achieved by his team. In its ruling of 7 July 1993, the *Cour de Cassation* rejected the ground that the coach's poor results could be construed as gross fault.³⁰ Moreover, upon examining the coach's employment contract, it determined that he was only bound to an 'obligation of means'. It follows from these cases that an employee's failure to meet targets does not *per se* constitute a legitimate reason for dismissal, nor can it be construed as gross fault, whenever those targets haven't been stipulated in advance. Instead, when targets have been stipulated in the contract, French courts would uphold a dismissal on the basis of an employee's failure to meet them: since the lack of professional competence on his/her part now amounts to a breach of contractually stipulated obligations, it follows that the dismissal would be supported by a legitimate and substantive reason. In such a case, judicial review would rather focus on the validity of any targets that have been set, and on whether failure to achieve them can be ascribed purely to poor professional performance by the employee.³¹ Performance appraisal clauses place employees under an obligation of result, such that, in order to establish an employee's failure to meet contractual obligations, the employer need only prove that the agreed result was not achieved. In his/her defence, the employee will then have to prove that such failure is due to a reason that is not attributable to him/her. As can be seen, the shift from an 'obligation of means' to an 'obligation of result' weakens the employee's position. This shift marks a significant development in the role that contracts may play in individual labour relations. Formally speaking, admitting the possibility that a clause might alter the nature of the obligation imposed upon an employee opens new possibilities for employment contracts. From the employer's perspective, the opportunity to shift the nature of the employee's obligation from one of means to one of result bears testimony to an increasing impact of competition and focus on effectiveness in the employment relationship. At the same time, this

²⁹ Cour de Cassation, Chambre sociale, September 22, 1993, 92-40.504, <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007185371> (accessed June 6, 2020).

³⁰ Cour de Cassation, Chambre sociale, July 7, 1993, 89-44.850, <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007189989> (accessed June 6, 2020).

³¹ C, Gendraud, L'insuffisance de résultats d'un salarié peut-elle constituer une cause réelle et sérieuse de licenciement ?, in *Revue Recueil Dalloz*, vol. 38, 1994, p. 305

development heads in the direction of strengthening the leverage that the employer has, in imposing additional contractual obligations on the employee, and this inevitably deepens a relationship of dependence between him/her and his/her employer.

A long-standing jurisprudence from the *chambre sociale* (social issues section) of the *Cour de Cassation* upholds stipulations that place the employee under an obligation to meet professional targets, as long as these are set out in his/her employment contract.³² On this basis, the court has also upheld the stipulation that an employee will be bound to achieve the professional targets set by the employer, subject to the employee's approval, whilst referring to a separate agreement for the determination of criteria and conditions to ascertain that those targets have been fulfilled.

In point of law, once an employee is found lacking in a performance appraisal exercise, with respect to targets that had been agreed upon, he/she will then become liable to dismissal due to the inadequacy of those results. The employee may dispute the dismissal decision, and demand judicial review of his alleged non-compliance with the contractual condition and of the legitimacy of termination of the employment relationship. French courts subject 'provided-targets-are-met' clauses to the same scrutiny as conditions of avoidance. Therefore, the condition needs to be realistic and achievable to produce effect. At the same time, in order to mitigate the negative effects on employees of such a position, courts have crafted an exemption in case the employee can establish a fault committed directly by the employer, or a fault not directly committed by the employer, but for which the employer's organisation remains liable.³³

It is also worth noting that, in some cases, a 'provided-targets-are-met' clause was not found to be not strictly necessary for dismissal, but it helped the employer justify a decision to dismiss an employee who had been neglecting his work duties for some time.³⁴ Therefore, another reason an employer might want to include a performance appraisal condition in the employment contract is to shelter him-/herself against the legal and financial consequences of arbitrary dismissal.

³² Y. Aubrée, *Contrat de travail: clauses particulières*, *op.cit.*, p. 37.

³³ Y. Aubrée, *Contrat de travail: clauses particulières*, *op.cit.*, p. 37.

³⁴ F. Laronze, *Portage salarial*, in *Répertoire de droit du travail*, Dalloz, Paris, 2018, vol. P, n 36, p. 13.

4.2. Introducing Performance Appraisal Through Collective Performance Agreements

In French Labour Law, there is a general principle whereby a collective agreement cannot ordinarily prevail over the most beneficial provisions of an individual employment contract, which do not grant the employer authority to amend it unilaterally.³⁵ However, the French Labour Code has witnessed limited attenuations of this principle at Articles 1224-3 and 1224-3-1. These articles specify that, in the event of transfer of a service—hitherto provided under private law rules—into public hands (or vice versa) an employee may be dismissed, independently of any economic reason, if he/she refuses amendments to his/her employment contract, whenever a collective performance agreement has been put into place.³⁶

In line with this approach—and in addition to individual performance appraisal or provided-targets-are-met clauses—France has introduced a new type of collective agreement, with the intention of adding ‘flexibility’ to the employment relationship. So-called ‘collective performance agreements’ were introduced, as a new article of the French Labour Code, in two steps. First, by Ordinance No. 1385-2017 of 22 September 2017, and then by Law No. 217-2018 of 29 March 2018, which ratified the former.³⁷ The aim of collective performance agreements is to enable contractual stipulations to keep the pace of market developments or market decline. Such agreements are typically justified by economic downturns. However, they could equally form part of a proactive management strategy aiming to develop the business and promote its growth.

For this reason, Article 2254-2(I) of the French Labour Code identifies the conditions in which a collective performance agreement might amend certain elements of the organisation and remuneration of work, or introduce new geographical or professional mobility policies. These agreements can be undertaken to respond to organisational necessities, or to the need of maintaining and developing employment. Art. 2254

³⁵ Y. Pagnerre, *Les accords de performance collective*, in *Revue droit social*, 2018, vol. 9., p. 694. In US and Canadian law, on the other hand, collective agreements are held to prevail over individual will.

³⁶ V. Loquet, *Modification du contrat de travail pour un motif non inhérent à la personne du salarié: La clarification se poursuit*, in *Revue droit du travail*, 2019, vol. 8, p. 576.

³⁷ B. Gauriau, *L'accord de performance collective depuis la loi n. 2018-217 du 29 mars 2018*, in *Revue droit social*, 2018, vol. 6, p. 504.

2(II) emphasizes that a collective performance agreement replaces, by force of law, those conditions found in individual employment contracts, which stand in contradiction. Pursuant to Art. 2254-2(V), when an employee refuses the new conditions, he/she can be dismissed for a special reason, which constitutes a valid ground for termination, whilst enjoying certain minimum guarantees.

For the purposes of this article, it is worth noting more specifically what sort of elements of the employment relationship can be amended through a collective performance agreement, and how. One such agreement might (1) amend the duration of work, especially its organisation and temporal allocation; (2) amend remuneration, whilst complying with the minimum wage levels stipulated for different levels of organisational hierarchy; and (3) define the conditions for professional or geographical mobility within the organisation. A collective performance agreement may be focused on either *or all* of the points mentioned above, and may include provisions that are contrary to, or inconsistent with, those stipulated in individual employment contracts.

In connection with performance appraisal, this means that one such agreement might either introduce binding parameters for performance appraisal, where they were absent from the individual employment contract, or amend them in such a way as to keep pace with market developments. In this sense, therefore, collective performance agreements are another source—beyond individual contractual clauses—by which employers might introduce a regime of performance appraisal with binding targets. The textual basis for introducing performance appraisal clauses via a collective performance agreement might be found in Article 2254-2(I). This is because performance appraisal or ‘provided-targets-are-met’ clauses can be construed as changes to the way remuneration is calculated, by introducing conditions that might affect the employer’s obligation to provide remuneration. Namely: if targets are met, then the condition for remuneration will be fulfilled, and the employer will be obliged to pay his/her employees. If they aren’t met, then the payment of remuneration will be discontinued or reduced accordingly.³⁸

When an employee rejects changes arising from the application of a collective performance agreement, he/she becomes liable for dismissal for a special reason, which is exempt from the basic guarantees relating to

³⁸ Y. Pagnerre, *Les accords de performance collective*, *op. cit.*, p. 694; L. Bento de Carvalho, *Le contentieux des accords d'entreprise au prisme du contrat d'adhésion*, in *Revue Droit social*, 2019, vol. 10, p. 869.

termination on economic grounds.³⁹ In response to this predicament, however, the French Constitutional Court has stated the same guarantees need to be provided as for the dismissal of an employee for personal reasons—especially with regard to pre-dismissal interrogation, notification, warning, and compensation.⁴⁰ A commentator has also suggested that, in a court of law, the employee might construe the employment relationship as a ‘*contact d’adhésion*’ (standard form contract), which would make possible a degree of judicial scrutiny of any terms added or amended by means of a collective performance agreement.⁴¹ These legislative developments in the French system demonstrate that, within the framework of labour law, a new approach co-exists with the general principle mentioned at the beginning of this section—a new approach that seeks to favour collective interest over individual interest, while still providing some guarantees.

Notably, collective performance agreements are allowed to amend certain key elements of the employment contract, like remuneration. However, it helps to remind oneself of the legal treatment of remuneration clauses as part of an employment contract—in order to delimit what kind of amendments are possible, even for a collective performance agreement. First, the terms of an employee’s remuneration cannot be altered without the consent of the employee him-/herself, instead they can be changed only if a clause has been agreed for this purpose in the contract—or if the clause in the individual contract has been replaced by that of a collective performance agreement. However, on no condition can the employer reserve exclusive authority to adjust remuneration. On this basis, any conditions stipulating that the employer has the right, at any time, unilaterally to adjust the rates and terms of payment of remuneration will be deemed ineffective and void.⁴²

While collective performance agreements provide added flexibility to increase economic returns, increasing the pace of work may equally have a direct impact on the health of employees. In connection to this trade-off, the French *Cour de Cassation* has acknowledged that the employer is equally

³⁹ L. Bento de Carvalho, *Le contentieux des accords d’entreprise au prisme du contrat d’adhésion*, *op.cit.*, p. 867.

⁴⁰ B. Gauriau, *L’accord de performance collective depuis la loi n. 2018-217 du 29 mars 2018*, *op.cit.*, p. 504.

⁴¹ L. Bento de Carvalho, *Le contentieux des accords d’entreprise au prisme du contrat d’adhésion*, *op.cit.*, p. 867.

⁴² M.-C. Escande-Varniol, *Salaire: définition et formes*, in *Répertoire de droit du travail* Dalloz, 2013, vol. S., no. 289-291, p. 66.

under an ‘obligation of result’ to ensure the safety of employees. Therefore, ‘it is forbidden for the employer, in exercising his management function, to allow measures that would be detrimental for the security and safety of employees’.⁴³

5. UAE Law at the Test of Performance Appraisal

The UAE has long been a destination for foreign workers. In recent years, it has also witnessed significant economic and social development and, with it, an increase in the number of employment contracts. In terms of employment relations, this has also ushered a trend for employers to set targets for their employees, and to evaluate the latter’s performance accordingly. This section revisits the current legal coverage for performance appraisal in the UAE, in comparison with the developments just observed in French Labour Law.

Before examining the detail of legislative and jurisprudential solutions available in the UAE with respect to performance appraisal clauses—compared to France—it is worth recalling some macroscopic differences between the two systems. The UAE, unlike France, is not a signatory to the International Labor Organisation’s Right to Organise and Collective Bargaining Convention of 1949 (No. 98) and to its Freedom of Association and Protection of the Right to Organise Convention of 1948 (No. 87). It is without a doubt that acceptance of the provisions contained in those agreements would alter the practice of industrial relations as well as affect the position of the UAE judiciary in the face of any attached litigation. At the same time, much of the existing Emirati legislation in the field of labor law finds its inspiration in international treaties and agreements⁴⁴—including some of the ILO conventions signed by other Arab Gulf countries⁴⁵—which primarily demand extending any existing legislative protection to workers, regardless of their nationality.⁴⁶

⁴³ Cour de cassation, Chambre sociale, March 5, 2008, n° 06-45.888, cited in S.D. Noisette, *Performance et droit du travail*, *op.cit.*, p. 20.

⁴⁴ A.H. Najida, *Compendium of the Labor Law and Social Legislation of the United Arab Emirates*, 1st edition, Al Bayan Commercial Press, Dubai, 1998, p. 70.

⁴⁵ K.A.R. Al-Mishaal, *Labor Standards, the World Trade Organization and the Expected Effects on the Kingdom of Saudi Arabia*, in *Imam University Journal*, 2015, vol 2, p. 211.

⁴⁶ I.A. Belhoush, Z.A. Zayed, *Protecting Worker's Wages According to the Provisions of the Federal Labor Law*, in *University of Sharjah Journal of Legal Sciences*, 2020, vol. 17, no. 1, p. 208.

Looking at domestic sources of law, the UAE Federal Labour Law No. 8 of 1980 ('UAE Labour Law') remains the primary source regulating industrial relations.⁴⁷ It establishes a number of formal and objective conditions that must be fulfilled in the event of termination of employment contracts. It follows that the power to terminate employment is subject to state control, both through the intervention of administrative agencies and through judicial oversight.⁴⁸ Historically, the law has been met with consistent efforts towards implementation by the Ministry of Labor, irrespective of the nationality of workers.

Moving closer to the specific focus of this piece on performance appraisal clauses, the main legislative reference applying to private sector employment is the aforementioned UAE Labour Law, and subsequent amendments. In that source, no explicit reference is made to performance appraisal and to the achievement of targets, neither in connection to individual employment agreements, nor to collective ones. At the same time, the UAE Labour Law does not prohibit the inclusion of a 'provided-targets-are-met' clause in the employment contract or any attached documents.

Article 117/1 of the UAE Labour Law allows both the employer and the employee to terminate an open-ended employment contract for a valid reason. This means that, if the reason for termination is not deemed valid, arbitrary termination will have occurred, which is sanctioned by Article 122 of the same Law.⁴⁹ If UAE courts were to follow the approach adopted by French courts, a performance appraisal condition included in an employment contract should alter any attached obligation of the employee from being an 'obligation of means' to an 'obligations of result'. This, in turn, ought to focus judicial scrutiny on whether the goals set by the employer under the contract are valid or not, and whether failure to achieve them might be ascribed solely to poor professional competence on the part of the employee.

However, when reviewing the grounds for termination, UAE courts do not seem to distinguish between obligations of result and obligations of

⁴⁷ B.A.F. Al-Sarhan, A Study of Employers' Authority to Seize Employee Wages: An Analytical Study of Labor Relations in the UAE Labor Law No. 8 of 1980, in *University of Sharjah Journal of Legal Sciences*, 2018, vol. 15, no. 2, p. 242.

⁴⁸ O.A. Al Aidarous, *Federal Law No. 8 of 1980 on the Regulation of Labor Relations: A Comparative Study with Arab Gulf Labor Laws*, 1st edition, Al Ain Modern Press, Al Ain, 1989, p. 335.

⁴⁹ A. Sarhan, A.A. Al-Mahdawi, Y.M. Obaidat, *Federal Law No. 8 of 1980 Regulating Labour Relations and Its Amendments*, 1st edition, University Library, Sharjah, 2012, p. 282.

means. It is respectfully submitted that this leads to decisions that, upon closer examination, may lack strong and convincing reasons. For example, a recent ruling from the Dubai Court of Cassation states that the defendant's termination of an employment contract due to the worker's failure on a number of counts (failure to develop a marketing strategy, to apply professional standards to new proposals, to enforce operational standards in budgeting and reporting, and to manage professional marketing plans) was not to be deemed an abusive termination. In so doing, the court did not nuance its distinctions, based on whether the worker was obliged to deliver a determined result, or whether he had simply committed to best efforts (obligation of means).⁵⁰

This approach seems to us to lack precision. When an employee fails to achieve targets that were not first put to his agreement, this should not automatically amount to a valid reason for dismissal, nor should it be construed as a grave fault on the employee's part. This is because an employment contract is based on personal consideration between employer and employee, with the former presumably weighing the latter's skills and suitability towards the desired work.⁵¹ It follows that only when targets have been spelled out in the contract, should failure to meet them constitute a material and valid reason for termination—a breach of contractual obligations. The approach adopted by French courts seems to offer greater precision and to reduce arbitrariness in the employer's decisions. Hence, it would have been desirable if the Dubai Court of Cassation had first ascertained whether the claimant had committed to best efforts (obligation of means), or to the achievement of an actual result, before upholding a dismissal due to poor performance.

UAE Labour Law does not regulate collective performance agreements as an *ad hoc* source of obligations in labour relations, in the same way the French legal system does. Instead, Articles 154–165 of the UAE Labour Law address 'collective labour disputes'. These articles allow for the mediation of collective disputes by the competent Labour Department, then by a Conciliation Commission formed by the Ministry of Labour and Social Affairs, and finally usher the intervention of a Supreme Arbitration Committee for the Resolution of Collective Labour Disputes. These interventions are meant to solve collective disputes between an employer and a group of employees, for instance as might arise in the course of

⁵⁰ Dubai Court of Cassation, Labor Decision No. 2018/11153, December 27, 2018, unpublished.

⁵¹ A.R.H. Yassin, *An Introduction to Labor and Social Security Laws*, 1st edition, Publications of Dubai Police College, Dubai, 1992, p. 399.

introducing or altering performance appraisal parameters in line with market needs—a situation that in French law is explicitly accounted for through collective performance appraisal agreements.

At the end of this mediation process, Article 163 of the UAE Labour Law establishes that neither party to the mediation may re-initiate a dispute in respect of which a final decision has been made by any of the mediating bodies that have been referred to above—except with the consent of both parties to the dispute. In this sense, a similar result to a collective performance agreement appears to be possible—through a different avenue—also in the UAE. In addition, Article 164 of the UAE Labour Law clarifies that the aforementioned committees are to reach a decision through the application of any laws in force in the UAE, but also of the provisions of Islamic *Shari'a* law, and any compatible rules of custom, principles of justice, of natural law, or of comparative law. For our purposes, the explicit reference to comparative law greatly widens the scope of the rules that can be applied to this type of dispute—which underscores the importance of comparative studies like the present one.

While the UAE Labour Law applies to private sector employment, Articles 30–35 of Federal Law Decree No. 11 of 2008, on Human Resources in the Federal Government (UAE Human Resources Law) explicitly regulate performance appraisal—although with a limited scope of application to civil servants working in ministries, in other government authorities and organisations, as well as in any federal regulatory bodies. In this piece of legislation, the regulation of performance appraisal occurs in connection with the employee reward system.

On this basis, the UAE Human Resources Law establishes a legal framework for performance appraisal, laying down objective criteria for rewarding employees for their achievements, in terms of productivity, attendance, innovation, and quality of output.⁵² Accordingly, it is established that line managers are to review employee performance on an annual basis through an apposite appraisal report,⁵³ while employees are undergoing performance appraisal. In particular, an employee's annual

⁵² S.S.A. Albloushi, *Promotion System and its Impact on Employee Satisfaction: the Case of the Ministry of Higher Education in the UAE*, 1st edition, Federal National Council Publications, Abu Dhabi, 2010, p. 32.

⁵³ Y.E.H. AlSaber, *The Main Employee Appraisal Systems in Government Organisations of the United Arab of Emirates in Comparative Perspective*, Paper presented at the Eighth International Seminar on Civil Service in Gulf Cooperation Council Countries, Publications Series of the Management Development Institute, 2002, no. 2, p. 50.

appraisal in accordance with the performance management system ought to provide the primary criterion for determining any special allowances pertaining to salary increments and promotions.

This regime is markedly different to the one applying to private sector employees. First, employee performance appraisal finds its source in the law, and not in an individual employment contract or other collective form of agreement: government ministries, public authorities and organisations, and federal regulatory bodies do not need to include an express term to that effect in any contractual documents. Secondly, performance appraisal is regulated solely in connection to the allocation of rewards. Instead, failure by an employee to achieve targets, or his/her poor performance, do not automatically become grounds for termination of his/her service, but only for cancelling or reducing his/her remuneration on a case-by-case basis.

In view of this, it is respectfully submitted that legislative and judicial intervention in the UAE ought to correct this disparity, in light of the principle of distributive justice. Equality among employees is an important basis for performance appraisal, which reflects positively on job satisfaction and, consequently, on productivity in the organisation. There is no doubt that equality requires the application of fair standards in performance appraisal exercises. How these standards of fairness ought to be determined depends on the concept of justice adopted by the organisation and by the court entrusted with judicial review. In this respect, there are two specific notions of justice that might apply here, namely: distributive and corrective justice.

Distributive justice is based on proportional equality—i.e. allocation of an organisation's resources (whether in terms of remuneration, rewards, or promotion) among its employees according to their respective merits and characteristics. At the same time, distributive justice also requires that what the employee receives in the allocative process is not just proportional to his/her individual situation, but also holds up in comparison with his/her colleagues, and with his/her peers in other organisations. Instead, corrective justice is based on arithmetical equality— i.e. treating all individuals on an equal footing regardless of merit—and thereby makes sure inequalities are addressed on the individual level at which they occur, without regard to comparative and distributive concerns.⁵⁴

⁵⁴ M.H. Malin, 'Topic in jurisprudence: The distributive and corrective justice concerns in the debate over employment at-will: some preliminary thoughts', in *Chicago-Kent Law*

Consistency of treatment on the job is a key factor in organisational justice, and if this is not addressed it can impact the outcomes of performance appraisal: there is an inevitable correlation between job satisfaction and distributive justice, taken as a dimension of overall organisational justice. The more an employee perceives the stable application of distributive justice as a criterion, the more satisfied he/she will be, with positive spillovers on his/her productivity.⁵⁵ This point must be weighed alongside the other parameters in performance appraisal exercises; however, equality and consistency of treatment must be borne in mind as a primary criterion to enable distributive justice within an organisation—and should therefore be encouraged through appropriate organisational and legal incentives.

6. Conclusion

In this paper, we have started out by situating performance appraisal as a management technique. We remarked the importance of organisational justice—in its procedural, distributive, interactional, and corrective dimensions—for driving productivity. This feature isn't so prominent in Emirati corporate life, partly as a result of the collectivism that pervades certain cultural attitudes like *wasta*. This is where a legal framework may guide organisations towards embedding the different dimensions of justice, even in the presence of a performance-conscious style of management.

At the management level, fairness in performance appraisals could be secured more easily, if organisations were to adapt their bylaws with an eye for the multiple dimensions of organisational justice. This would also open up a middle ground between the alternatives of organisations appealing adverse decisions and employees' lawsuits. Sound internal appeals procedures, with outside legal options, would afford employees more opportunities for redress if they perceived their performance assessments as unfair. Finally, training managers in providing ongoing feedback to employees would play another significant role in mobilising employees towards organisational outcomes.

Review, 1992, vol. 68, p. 117. See also E.J. Weinrib, Corrective justice in a nutshell, in *University of Toronto Law Journal*, 2002, vol. 52, no. 4, pp. 349–356, at 351.

⁵⁵ R. Al-Fadhil, T. Somia, Distributive justice and its relationship with job satisfaction of the organization's employees, in *Journal of Development and Human Resources Management*, 2017, vol. 6, p. 202.

From a legal standpoint, placing performance appraisal conditions in contractual documents is a way for employers to seek a direct increase in productivity through making certain standards of performance obligatory. However, there is a fine line to be trodden before contractual targets overshoot what is possible for the employee to achieve. Therefore, to counterbalance the employer's right to benefit from a performance appraisal condition, judicial review should be allowed on whether the employer has put employees in the condition of meeting those targets—and refuse enforcing them it is established that the employee has been tasked with unattainable goals.

A performance appraisal clause in the employment contract works by shifting the nature of the obligation from one of means to one of result. This makes any dismissal for failure to meet targets more resistant to legal scrutiny. At the same time, legal checks need to exist to prevent employers from arbitrarily transferring to the employee a substantial part of his/her entrepreneurial risk. In France, stipulation of a performance appraisal clause in the contract, or in any of its attachments, often marks the difference between valid and arbitrary dismissal, when employees fail to meet targets. At the same time, this is counterbalanced by judicial review that the conditions set by the employer are not difficult or impossible to achieve, in order to afford an excuse for termination at will. In order to avoid this and to protect the interests of employees, competent judicial authorities must ensure that any contractually stipulated targets are attainable, specific, measurable, realistic, and time-bound.

Another notable development in French labour law is the possibility for collective performance agreements to prevail over the more favourable provisions of an individual employment contract (with the risk, in case of refusing the contractual amendment, for employees to be dismissed on special grounds). This marks a change in approach, where previously protection of the employees' interests against the bargaining power of the employer took undisputed priority. At the same time, guarantees are still needed to protect employees from the arbitrary use of collective performance agreements as a shortcut towards terminating the employment relationship, ensuring guarantees in connection with pre-dismissal interrogation, notification, warning, and compensation. Secondly, another set of guarantees pertains to health and safety. Increased burdens on employees through performance appraisal clauses or collective performance agreements must be accompanied by measures to ensure that their health is safeguarded. Therefore, if the employee proves that any additional goals assigned to him/her by the employer are a direct cause of health damage, French courts will hold the employer

liable for it. This forces the employer to strike a balance between the drive to increase employees' performance, by 'raising the bar' through contractual means, and preserving employees' health.

When it comes to the UAE, the Human Resources Law mandates performance appraisal for the allocation of benefits to civil servants employed by a public institution. Instead, the Labour Law—which applies to the private sector—leaves performance appraisal largely to the parties' agreement and managerial practice. In view of the balance that legal regulation has made possible in French law, we deem it would be desirable to update the UAE Labour Law to mandate that performance assessment criteria be to be agreed contractually, either through individual or collective bargaining. This can be a suitable way of striking a balance between the interests of the employer and those of the employee, while at the same time establishing legal checks that allow judicial review in case of disputes. When it comes to judicial review of dismissal for unsatisfactory performance, we also deem it more precise to distinguish systematically between obligations of means and obligations of result, as a way of ascertaining whether failure to meet desired targets might constitute *per se* a valid reason for dismissal. Lastly, addressing the disparity of treatment between private and public employees in the UAE cues the broader question of ensuring distributive justice in performance appraisal, to ensure the workforce perceives a consistent assessment of performance. Distributive justice, by bringing predictability in allocating decisions, can powerfully increase incentives towards productivity, at the same time as strengthening organisational justice.

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