

The Role of Judiciary in United Arab Emirates

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Our judiciary system deviated from the Anglo-Saxon system by the fact that court decisions do not have enforcing power at any of its court levels, as a general rule. Accordingly, judiciary here is not considered as one of the sources of law. That has been expressly specified in Article (1) of Civil Transactions Act which restricted the sources of law in legislations, Islamic Sharia and custom, thus not mentioning judiciary as a source of law. However, occasionally reference is made to decisions of higher level courts, but following them is not obligatory on the judge. Accordingly, lower level courts abide by principles applied by the Supreme Court, knowing that their decisions are scrutinized by that court.

Local Judiciary Jurisdiction is the Principal Jurisdiction

In UAE there are two divisions of judiciary: Federal Judiciary and Local Judiciary. This is explained by Article 104 of the constitution that local judicial authorities in each of the emirates are responsible for all judicial affairs not assigned to federal judiciary by the constitution. Consequently all judicial affairs fall under the jurisdiction of local authorities in each emirate, not under the federal judicial authorities. Article 105 of the constitution allows transferring all or part of any emirates judicial jurisdictions to the federal courts by a federal law upon the request of that emirate. Criminal, civil and commercial cases allowed to be referred to federal appeal courts are defined by a federal law whose decisions are final.

Abu Dhabi, Sharjah, Ajman and Fujairah transferred the jurisdiction of the judiciary to the federal courts, and subsequently Act No.6 of the year 1978 was issued specifying the judiciary levels and the place in which these courts assemble. Later on the emirate of Umm Alqaiwain followed.

Art. 1 of above Act No.6 stipulated that courts of 1st instance in the capitals of Abu Dhabi, Sharjah, Ajman and Fujairah become federal 1st instance courts upon implementation of this act. 1st instance courts in other cities outside capitals of these emirates to be considered are affiliated departments of the federal courts in the capital cities, and similarly the courts of appeal.

Judgment in Administrative Disputes between the Union and Individuals:

Control on administrative functions differs from one country to another. In France, Egypt and Kuwait it is performed through the administrative judiciary who establish special courts for administrative disputes filed by individual persons against a department or vice versa, while in England and UAE it is performed by general judiciary. Para 1 of Art. 120 of UAE constitution stipulated that: "The Union shall have one or more federal courts of 1st instance to hold sessions in its permanent capital or in some other capitals of other emirates to perform judicial jurisdiction in the following cases:

- 1- civil, commercial and administrative disputes between the Union and individuals whether the Union is defendant or plaintiff.

Although this article assigned the jurisdiction among courts of 1st instance of all types of cases civil and administrative without specifying a particular court for the administrative cases, but federal act No.6/1978 stipulated in article 3 the following: "Taking in consideration stipulation of the previous article, the federal court of 1st instance in the Union's capital city is assigned the jurisdiction of all administrative disputes between the union and individuals whether defendant or plaintiff. This court can hold its sessions in one of the capital cities of other emirates, if necessary. Civil and commercial disputes between the Union and individuals shall be under the jurisdiction of the court in the place of residence of defendant. Consequently and according to this stipulation, personnel harmed by the administration to file cases against any administrative body whether federal or local at any court except the 1st instance court in Abu Dhabi. This procedure might be very difficult to the victim of the administration's harm as the representative of any government body is the Fatwa and Legislation Department located in the Capital city of the Union.

In Dubai and Ras Alkhaimah the judicial jurisdiction is with the local judiciary in organization and jurisdiction. They did not request to transfer their judiciary to the federal judiciary.

Law Courts are divided as follows:

I. Federal Courts of 1st Instance:

The constitution allows under art.102 the Union to have one or more federal courts of 1st instance that hold sessions in the permanent capital of the Union or in one of the capital cities of other emirates to perform judicial jurisdiction in its domain the following cases:

1. Civil, commercial and administrative disputes between the Union and individuals whether defendant or plaintiff
2. Crimes committed within the boundaries of the permanent capital city of the Union except those which fall under the jurisdiction of the Federal Supreme Court according to Art. 99 of the constitution.
3. Personal Status, civil and commercial cases between individuals initiated in the permanent capital of the Union.

II. Federal Appellate Courts:

To this courts decisions of Federal courts of 1st instance are appealed for the purpose of ensuring that faults of 1st instance courts judges are corrected. This type of courts are located in the capital cities of Abu Dhabi, Sharjah, Ajman, Fujairah and Umm Alqaiwain.

III. Federal Supreme Court:

The highest level of judicial system in UAE and reflects the most important features of

unifying and organizing judiciary therein. Special attention was given to this court in the constitution, thus not leaving it all to the private law to organize all related matters. Consequently, articles 99, 123, 124 and 151 of the constitution and article 33 of federal law No.10 of 1973 defined the jurisdictions of the federal supreme court as follows:

- a. Art. 99 of the constitution defined that Federal Supreme Court has jurisdiction to adjudicate in the following matters:
 1. Various conflicts between member emirates of the Union, or any directorate and the federal government, once they are referred to this courts on the request of either party.
 2. Examine the constitutionality of federal laws if challenged by the any emirate for violation of the Union's constitution, and examine the constitutionality of legislations issued by any emirate once challenged by one of the federal authorities for violation of the Union's constitution.
 3. Examine the constitutionality of law, legislations and by-laws in general once referred by any court in the country at the time of hearing a certain case. The supreme court's decision is binding on the referring court in this respect.
 4. Interpret the constitution's provisions if requested by any of the Union's authorities or the government of any emirate. Such interpretation is binding on all.
 5. Investigating with ministers and senior official of the Union appointed by a decree, for acts performed by them during their service, upon request from the Supreme Council and according to the appropriate law.
 6. Crimes directly affecting the Union's interest such as internal and external security, forgery of official documents or stamps (seals) of any federal authority and crimes of currency counterfeiting.
 7. Jurisdictional conflicts between the federal judiciary and local jurisdictions.
 8. Jurisdictional conflict between a local judiciary of one emirate and a local judiciary in another emirate, and organizing the governing rules in the federal law.
 9. Any other jurisdictions mentioned in this constitution or referred by a federal law.
 10. Other jurisdictions contained in art.123 of the constitution as follows: 1- In exception from art.120, item 1 concerning restricting the external and international relations to the Union, member emirates may conclude limited agreements of local administrative nature with neighboring countries provided that they are not inconsistent with the interests of the Union in advance. If the council objects the conclusion of such agreements, it must be postponed until the federal supreme court decides on that as early as possible.
 11. Article 124 of the constitution stipulates that "Concerned local federal authorities, prior to concluding any international treaty or agreement that could constitute a hazard to the special situation of any emirate, should consult the concerned emirate in advance. If there is any objection, the issue has to be submitted to the supreme court for decision.
 12. Provisions of this constitutions have sovereignty over constitutions of other member emirates of the Union. Federal laws issued in accordance with its

provisions have priority over legislations, by-laws and decisions issued by the emirates' authorities. In case of conflict, any lower legislation becomes void if it contradicts a superior legislation, but to the extent that removes that contradiction. If the conflict remains, the issue has to be submitted to the Federal Supreme Court for decision.

Federal Supreme Court Decisions are Final:

Federal supreme court decisions are not subject to rejection as expressed in art.101 of the constitution which indicates that "Federal supreme Court decisions are final and binding on all. If the court finds upon reviewing the constitutionality of laws, legislations and regulations, that a federal legislation is contradicting the Union's constitution, or the legislation or local regulation under review contain a contradiction to the Union's constitution or a federal law, the concerned authority in the Union or the Emirates, as applicable, must take necessary measures to remove the constitutional violation or have it corrected.

It is obvious that the subject article did not invalidate the legislation violating the constitution, but only decided that it is violating or contains violation, and the issuing authority has to remove the violation by correcting the legislation or regulation.

The Federal Supreme Court holds its sessions in its headquarters in the Union's capital city, while the constitution did not prevent holding its sessions in any capital city of any emirate (Art.100 of the constitution).

Interpretative role of the Federal Supreme Court:

Besides looking into appeals related to constitutional or legislative violations, Federal Supreme Court has another jurisdiction of interpreting constitution's provisions upon requested from any of the Union's authorities or emirates governments, which becomes binding on all (Art.99/4 of the constitution).

Local Judiciary in the Emirates of Dubai and Ras Alkhaimah:

Local law courts jurisdiction is limited within the boundaries of each emirate in all disputes and cases except those considered by the constitution and subsequent federal laws to be under the jurisdiction of the federal judiciary (Art.104 of the constitution).

Emirate of Dubai

Law no. 3 of 1992 on the formation of the courts in Dubai Emirate provided for the formation and jurisdiction of the three courts, each separately. Article 3 of this law indicated that Dubai Courts consist of the following:

- 1- Dubai Court of Cassation: To look into challenged decisions of Dubai Court of Appeal.
- 2- Court of Appeal
- 3- Court of 1st Instance which consists of both civil and Sharia courts.

This law was followed by law no.3 of 2000 declaring the formation of a Department called Courts Department that was entrusted with the organization of the courts in Dubai Emirate from the financial and administrative sides. This latter law specified the jurisdiction of the Department and its technical, financial and administrative administrations.

The situation remained unchanged until the enactment of Law no. 1 of 2003 on the establishment of the Justice Department which has given the said department the authority to extend its jurisdiction over the courts and the Public Prosecution, with all their previous jurisdictions and administrations, and supervise the Judicial Inspection Body. In the organization of the courts, public prosecution and judicial inspection affairs, the Law emphasized on the necessity to refer to the laws organizing each separately prior to the issuance of the law establishing the Justice Department.

Then, the Law no.5 of 2005 that abrogated law no.1 of 2003, establishing the Justice Department, and was followed by Law no.6 of 2005 which reinstated the matter as it previously was by making the courts a separate entity independent from the Public Prosecution.

Emirate of Ras Alkhaimah

Judiciary is divided into the following:

- 1- Court of 1st instance
- 2- Court of Appeal

Judiciary in UAE is also divided into civil and Sharia. Civil judiciary looks into commercial, labor and criminal litigations, and Sharia judiciary looks into family disputes between wives and husbands, also criminal cases referred from public prosecution.