

JUDICIAL GOVERNANCE AND ITS ROLE IN ACHIEVING JUSTICE EFFECTIVENESS

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Abstract

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Using the analytical method, the purpose of this paper is to emphasize some constitutional and legal principles, whose application and implementation will lead to UAE judiciary governance. Six major principles can be summarized as a result of these principles (Khalil, 2022). A few of these principles serve as a foundation for the UAE judicial governance; others serve as a guarantee for judicial governance. Further, the principles of openness of the judiciary, a confrontation between litigants, and appeals against court rulings ensure judicial governance (Alsubaie, 2022). At the end of this paper, a number of results shall be confirmed. The UAE judiciary will definitely preserve the right to litigation as a result of its governance. Additionally, all citizens and residents shall have the right to initiate legal proceedings without discrimination, provided that the following rights are satisfied: the right to legal counsel, the right to confrontation between litigants, and the right to appeal against court rulings.

Keywords: Governance of Judiciary, United Arab Emirates, Equality Between Litigants, Judicial Independence, Impartiality of the Judge, Confrontation Between Litigants, Appeal Against Rulings, Openness of Judiciary

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1. INTRODUCTION

A basic rule has always been in effect since the emergence of organized communities until the birth of modern states; no one may take their rights with their hands, just as no one may adjudicate for themselves (“L’adage ‘Nul ne peut’”, 1967; Brisset, 1976). Therefore, the state has assumed the responsibility of resolving disputes and administering justice. It has become one of the most important functions of the state over time (Zaghlol, 1991). As a result, all states have granted their citizens the right to recourse to the judiciary in order to claim their rights (i.e., the right to litigation) (Al-Salek, 2017). In this way, it is a public right that

may not be forfeited or extinguished for any reason (Saif, 1968).

In this regard, in order to enable all individuals to exercise the Right to Litigation, the constitutional and legal provisions stated in the United Arab Emirates have paid much attention to the applicability of this right. That is to say, these provisions have stressed several basic principles that shall ensure the access of all individuals to the right to litigation, as a basic human right. Hence, the state has set a number of rules representing the foundations for the governance of the Emirati judicial system; thus, these rules shall function as a major key for the desired development of the judiciary (Al-Qahtani, 2018).

These basic principles can be derived from the new federal judicial authority law promulgated by Federal Judicial Authority Law No. 32 of 2022 and the new federal civil procedures law promulgated by Federal Civil Procedure Law No. 42 of 2022. Accordingly, the principle of legal equality between litigants is considered the basis for judicial governance. The two principles of judicial independence and impartiality of the judge, on the other hand, are considered guarantees of judicial governance. Moreover, the remaining principles shall ensure judicial governance through several judicial working mechanisms, including the openness of the judiciary, a confrontation between litigants, and two-level litigation.

This paper is primarily concerned with stressing constitutional and legal principles, which should lead to the governance of the Emirati judicial system, as well as guaranteeing the right to litigate (ForumIAS, 2021). As a result, these principles aim to ensure that the judiciary works efficiently and fairly on the one hand and that everyone has easy access to a fair judiciary, with simple procedures, low costs, and the right to counsel (Mabrouk, 2015; Chilea, 2010). As a final point, judicial governance is considered one of the most important mechanisms for combating financial corruption and enhancing financial performance integrity (Rashwan, 2019).

Briefly, the paper is structured as follows. Section 2 reviews relevant literature. Section 3 analyzes the paper's methodology. Section 4 discusses the research results and examines the principles of judicial governance in the UAE, and Section 5 presents the conclusion.

2. LITERATURE REVIEW

An article entitled *Judicial Governance is the Key to Developing the Judiciary* (Al-Qahtani, 2018) stressed that the issue of judicial governance is one of the most important topics that are considered the key to developing the judiciary and enhancing its competence and professional ability. Al-Qahtani (2018) highlighted at the outset what the term governance is, which in short means making everything through a system that guarantees the rule of law and the fairness of its application. It mainly focuses on enhancing transparency, justice, rights, oversight, and independence between authorities, non-conflict of interests, and fighting corruption. In addition, if the term governance is often addressed in relation to companies, and sometimes government institutions, the treatment of "judicial governance" rarely occurs. According to Al-Qahtani (2018), "judicial governance" is much more important than any other sector. Reflecting on the judicial systems in the Arab countries, we find that governance is present in many judicial legislations, but it is scattered and needs to be arranged and further strengthened. Governance must protect the independence of the judiciary and judges from any influence or interference. Governance also preserves the rights of judges within the apparatus in a way that guarantees equality and reliance on competence only, and fights influence and nepotism. Governance is also concerned with ensuring that the judge's authority does not deviate from its path.

Al-Qahtani (2018) highlighted that governance also focuses on disclosure as a guarantee of

transparency, but in the judicial authorities the matter is somewhat different, as some decisions are not disclosed for the sake of the interests of the litigants and to ensure their confidentiality, but the most important disclosure here is with regard to the pleadings themselves and disclosing to them equally, and everything related to their case.

Rashwan (2019) dealt with identifying the role of judicial governance in promoting financial integrity to reduce financial corruption. In order to answer the study's questions and test its hypotheses, the researchers relied on the analytical descriptive approach to highlight the theoretical side by reviewing previous studies, downloading the results of the applied study, and testing hypotheses using the statistical program. The questionnaire system was relied upon after its evaluation and arbitration by a number of specialists in the research community consisting of accounting experts, and financial arbitrators registered in the records of the Libyan and Palestinian courts of first instance, amounting to 211 experts and arbitrators. The results of the study proved that the application of judicial governance is one of the most important mechanisms for combating financial corruption, and an important strategic requirement to enhance integrity related to financial performance. The researcher recommended the need to end the political division that exists in Libya and Palestine in order to be able to build a judicial system capable of applying judicial governance to help in resolving judicial and financial disputes.

Alsubaie (2022) in his paper addressed the nature of the principle of litigation at two levels, the importance of this principle, its historical development, in addition to some of the drawbacks to this principle. Alsubaie (2022) pointed out the importance of the principle of litigation at two levels as a guarantee to reach the truth and to achieve a judicial ruling expressing truth and justice with clarity and accuracy. Alsubaie (2022) followed descriptive, historical, and analytical methods.

Alsubaie (2022) reached some results, the most important of which are: that the principle of litigation at two levels provides the opportunity for the litigants to raise the dispute again, which enhances confidence in the judicial system. Alsubaie (2022) also emphasized the importance of adopting this principle because it performs two essential functions: the first is preventive, as it makes the judge slow down and exert more care and effort before issuing the judgment, and the second is remedial, where the errors of the court of the first degree are corrected because the judges of the second court are more numerous and more experienced.

McIntyre (2019) provided a theoretical basis for the threats to the independence and impartiality of judges. McIntyre addressed these ideas of judicial impartiality, vulnerability, deviation, and independence, arguing that they can only be adequately understood by referencing the underlying judicial method and function. McIntyre (2019) reframed familiar concepts of "judicial independence" and "impartiality" as concepts derived from and dependent upon the previously articulated judicial function and method. A circumstance will constitute a threat to judicial impartiality where: 1) it influences the decision-making of the judge, which would be inconsistent

with, and deviating from the proper judicial decision-making processes; 2) no reasons can be derived from the overarching judicial function that renders it acceptable.

3. METHODOLOGY

3.1. Research methodology

In this paper, the Authors have adopted the “analytic approach” to address the subject of governance of the judicial system in the UAE. The Authors have analyzed the constitutional and legal principles that shall ensure the fulfillment of the right to litigation, as a basis and a guarantee for the UAE judiciary governance. In particular, these principles include six major principles: judicial independence, litigants’ equality, litigation at two levels, openness of the judiciary, impartiality of the judge, and confrontation between the litigants.

In this context, the Authors have elicited these principles by studying and analyzing the relevant provisions in the United Arab Emirates Constitution of 1971. In addition, they have also addressed several legal provisions from the following laws and regulations: the Judicial Authority Act, enacted under new Federal Judicial Authority Law No. 32 of 2022, the Civil Procedures Act, enacted under new Federal Civil Procedure Law No. 42 of 2022, and finally, the Judicial Fees Act, enacted under Federal Law No. 13 of 2016.

Furthermore, the Authors have found out that some of these principles have been adopted by the UAE by virtue of the state’s approval of the *Code of Conduct for Ethics of Judicial Work* of 2017, issued in Riyadh by the Gulf Cooperation Council (GCC, 2017). In addition, the Authors’ analysis was not limited to the legal provisions concerning the governance of the judicial system only; however, these principles have also been authenticated and reaffirmed by virtue of a number of court rulings issued by the Federal Supreme Court, as well as a number of jurisprudential publications specialized in the field of litigation procedures and court work regulation.

3.2. Data collection

In the first phase of preparing this paper since the beginning of 2021, the Authors collected a variety of data and sources regarding the governance of the Emirati judicial system. All information and data collected can be attributed to the following four (4) major sources:

- Source I represented in the constitutional and legal provisions outlined in the United Arab Emirates Constitution as well as the aforementioned laws, which all stressed the basic principles of litigation, leading to the governance of the Emirati judicial system.

- Source II appearing in general publications in the field of civil procedures law concerning the basics of litigation as well as interpretations of some jurists regarding their importance and applicability.

- Sources III include some specialized publications discussing the main principles ensuring the efficient and fair functioning of the UAE judiciary, as a basis and a guarantee for its governance.

- Source IV represented in some court rulings issued by the Federal Supreme Court of the United Arab Emirates, which further guarantees the application of these principles and the implementation of the right to litigation for all without discrimination.

3.3. Document analysis

In the second phase of preparing this paper, the Authors have analyzed several legal provisions stated in the United Arab Emirates Constitution and legislation. In addition, the Authors have also discussed various explanations and interpretations mentioned for these provisions in several jurisprudential publications, whether they are general publications concerning litigation procedures, or specialized ones concerning the basics and principles of litigation. Moreover, the Authors have supported this analysis with the official position of the UAE judiciary in this regard; and that is through the display of some court rulings issued by the Federal Supreme Court of the United Arab Emirates. Finally, the Authors have managed to determine and arrange the basic principles that shall guarantee the governance of the Emirati judicial system.

4. RESULTS AND DISCUSSION

4.1. Research results

According to the results of the study and analysis of the topic of “governance of judiciary in the United Arab Emirates”, the following conclusions can be drawn:

1. The right to litigation comes on top of the legal and constitutional guarantees for rights and freedoms in the UAE. To ensure the fulfillment of the right to litigation, specific rules had to be developed within the Emirati Judicial System.

2. The UAE legislator guarantees the right to litigation by applying a set of principles that represent judicial governance’s foundations.

3. Each citizen or resident of the UAE is entitled to file a claim against a competent judge who is duly qualified to hear such a claim, based on the nature of the dispute and all the circumstances and elements involved.

4. As a general rule, all individuals, whether they are nationals or expatriates, have the right to litigate in the state’s courts.

4.2. The principle of equality between litigants before the UAE judiciary

The Emirati legislator guarantees equality between litigants, without any discrimination between citizens and residents, upon the fair settlement of disputes regarding their rights and obligations. We will discuss the principle of equality before the judiciary and determine the consequences of applying this principle.

4.2.1. Concept of the principle of equality before the judiciary

The principle of equality between litigants is considered one of the most important principles, on which the Emirati judicial system is based. That is to say, through such equality, the State guarantees the people's trust and reassurance in the judiciary. In other words, according to human nature, equality is one of the major foundations, on which any just judicial system may be erected (Sawy, 2000). Hence, this equality could be fulfilled by granting every citizen and resident the right to recourse to the judiciary, without any discrimination between the litigants.

In this context, Article 25 of the United Arab Emirates Constitution states that all individuals are equal before the law, without any discrimination based on race, origin, religious creed, or social status. In addition, Article 41 of the United Arab Emirates Constitution states that any man may file a complaint before the competent authorities — including all judicial authorities — regarding any violation of the stated rights and freedoms.

Furthermore, since the right to litigation is a public right, a person may not be held accountable for the damages resulting from exercising this right, unless it is a case of deliberate abuse or misuse. That is to say, the failure of someone who exercises his right to recourse to the judiciary is not in itself a binding reason for compensation (Al-Wafa, 1990). Hence, the respondent may not file a claim for compensation from a plaintiff whose claim has been dismissed on the basis of being a defective pleading. However, such compensation shall be obligatory, in case of abusing this right or using it intentionally to cause damages to others (Civil Cassation No. 160, 1985).

4.2.2. Consequences of equality before the judiciary

The principle of equality before the judiciary states that the right to litigation before the judiciary shall be considered one of the basic rules and freedoms. Hence, every person shall be entitled to claim legal protection before the judiciary. In addition, every person shall be entitled to the right to legal counsel, when required from or by him before a court.

The right to recourse to the judiciary

An individual's right to exercise this right, as well as the freedom to do so, stipulates the following (El-Nimr, 1982):

- any person shall be entitled to claim legal protection before the judiciary, with regard to any content or subject matter whatsoever;
- any person shall be free to claim judicial protection at any time, upon his firm belief that there is a need for such legal protection;
- any person shall be free to file a claim against anyone, as he may deem necessary; for example, a creditor may ask some of his debtors to fulfill their obligations, while condoning other debtors;
- any person shall be free to ask the court for any demands, whether they are objective requests for permanent legal protection or temporary ones for the temporary settlement of a certain situation;

- any person shall be free to file any legal claim, without certain restrictions or specific forms; as anyone may claim this legal protection through whatever procedures he may want, either through initiating a lawsuit or filing a statement of claim.

The right of defense before the courts

All persons shall be entitled to the right of defense before the judiciary, whether they are plaintiffs, defendants, or other involved parties (Tirvaudey, 2019), and that is as long as they have the legal capacity of a litigant in the claim (Civil Cassation No. 456, 2012). In this sense, the right of defense before the judiciary is considered an essential part of the court's public order; thus, in case of any violation of this right, the court ruling shall be deemed defective (Commercial Cassation No. 568, 2011).

In this context, it is legally stated that any defenses shall be submitted by the litigant to the court of subject matter; as the court's opinion about the filed legal claim may be altered upon their decision on these defenses. Therefore, the court shall investigate all submitted defenses and shall respond to each submitted defense with the relevant causation. That is to say, the court's failure to investigate any defense submitted by the defendant shall constitute a defect in the ruling's causation, hence leading to the ruling nullity, according to Article 130 of the Civil Procedures Law (Administrative Cassation No. 1413, 2012).

Nonetheless, in spite of being part of the court's public order, this does not prohibit the legislator from regulating the right of defense before the courts. In other words, this right shall be preserved through specific proceedings, or it shall be invoked within a specific period. Moreover, if there is no legal provision stated in this regard, the right of defense shall be considered absolute without any restrictions, whether these restrictions concern the form or the date (El-Nimr, 1982).

4.3. The principle of the independence of the judiciary

4.3.1. What does judicial independence mean?

The independence of the judiciary or judicial authority refers to the ability of the judiciary to perform its functions while being safe and secured against any interference from the legislative authority or the executive authority in any judicial work (Shehata, 1987; Al-Jabali, 2007). In this regard, Article 94 of the United Arab Emirates Constitution emphasizes the principle of Judicial Independence as follows: "Justice is the basis of governance. The UAE judiciary is entirely independent, and judges are subject to no authority other than the rule of law and their conscience". In addition, Article 1 of the new Federal Judicial Authority Law No. 32 of 2022 states that: "Judges are independent and have no authority over them in the execution of their duties other than the provisions of the Constitution, the laws in force, and their consciences. It is not permissible to prejudice the independence of the judiciary or to interfere in the affairs of justice".

Accordingly, the principle of Emirati judicial independence states the following:

- neither the legislative authority nor the executive authority may ever adjudicate on

disputes between individuals and they may never amend or alter any rulings issued by the different courts, as these court rulings shall apply to them (Gemie & Abdelfattah, 1982);

- the courts may never refrain from applying the law, amending any of its provisions, or interfering with the works of the legislative and executive authorities (Al-Wafa, 1990).

4.3.2. Exceptions to judicial independence

The legislative authority shall enact and pass the laws applied by the judicial authority, including laws concerning the regulation of the judiciary itself.

The Federal Supreme Court shall be entitled to investigate the constitutionality of federal laws and legislations issued by an Emirate; as all courts of law shall abide by rulings of the Federal Supreme Court, pursuant to Article 99 of the United Arab Emirates Constitution.

By virtue of Article 107 of the United Arab Emirates Constitution, his Excellency Head of the State shall be entitled to pardon anyone from executing a legal penalty ruled by a federal judicial authority — before or during the execution of this penalty, or to commute the penalty. Moreover, the Head of the state may commute the death penalty into a lesser penalty, according to Article 108 of the United Arab Emirates Constitution.

4.4. The principle of impartiality of the judge

This impartiality refers to the judge's lack of preference for either litigant. That is to say, the judge may never offer help to any of the litigants, add facts from his part to the pending claim, nor submit any evidence on behalf of the litigants. However, the judge's mission is limited to adjudicating the facts and evidence submitted by the litigants before him (Omar, 1986). On this basis, the court hearing shall be open and public, so that the litigants may have equal access to the good functioning and administration of justice that shall be delivered fairly upon the equal treatment of all litigants.

In this context, the principle of impartiality of the judge has certain aspects as follows:

- the judge may never have any interest whatsoever in the pending claim, as he may never hold the two legal capacities of a litigant and an arbiter; that is to say, he may not be the ruling judge and a litigant at the same time (Fahmy, 2001);

- the judge may not have any prejudice regarding the pending claim, as he may not adjudicate on the basis of his personal knowledge; thus, he may never hold the two legal capacities of a witness and an arbiter (Khalil, 2022);

- the judge may not breach the litigants' right to counsel, which necessitates taking all required procedures concerning the litigants' confrontation, as well as fulfilling the principle of legal equality between the litigants by granting all litigants equal chances of defense. In this sense, the court shall respond to all essential defenses, i.e., defenses that could alter the court's opinion about the claim; provided that such defense shall be associated with supporting evidence, which may be accepted directly as proof or verified by the court in this regard (Commercial Cassation of 28/03/2011, 2011).

4.5. The principle of openness of the judiciary

The principle of open justice is considered one of the most important principles, on which the judiciary is based. By virtue of this principle, anyone may check and reassure the integrity of the judiciary, while duly performing its functions (Raschel & Nicolas, 2022). Therefore, the stated judicial regulation has stipulated the openness of the judiciary through the following rules and aspects: the openness of hearings, oral pleadings, causation of court rulings, and publication of court rulings (Muslim, 1978).

4.5.1. Openness of hearings

The principle of open court stipulates that any claim shall be heard and examined through open hearings, which any person may attend without restrictions (Brillé-Champaux, 2020). In addition, any court ruling shall be issued in a public and open hearing (Al-Wafa, 1990). The purpose of this principle is to enable the litigants to have free access to the court works, hence reassuring themselves of the court's integrity, as well as making sure of the judges' utmost care for their claims. Moreover, this principle adds more trust and respect to the judges' stature by allowing the litigants to follow up on the management of all hearings with full integrity and impartiality (Gemie & Abdelfattah, 1982).

In this regard, the Emirati legislator was keen to stress the principle of openness of hearings in several legal provisions as follows:

1. Article 26/1 of the new Federal Judicial Authority Law No. 32 of 2022 states that "all court hearings shall be held publicly and openly unless their confidentiality has been ordered by the court on its own or at the request of the public prosecution or one of the litigants for the sake of maintaining public order and conduct; and in all cases, the court ruling shall be issued in a public hearing".

2. Article 79 of the new Federal Civil Procedure Law No. 42 of 2022 states that "the pleading shall be public, unless an applicable law stipulates otherwise, or the court has deemed it necessary — upon the court's discretion or upon the request of a litigant — to hear this pleading confidentially, taking into consideration the public order, public morals, and family sanctity".

4.5.2. Oral pleadings

This principle stipulates that the judge shall adjudicate on the pending claim, according to the statements made orally by the litigants at the court hearing, as well as all other legal procedures taken by the court in the attendance and confrontation of all litigants (El-Nimr, 1982). In this context, the purpose of this principle is to ensure public oversight over the judges' work; and that is in order to maintain a fair and just judiciary. In other words, pursuant to this principle, the court rulings issued by the different judges may be conformed to the conducted pleadings and proceedings (Al-Wafa, 1990).

In this sense, the stipulation of this principle does not mean prohibiting the defense from submitting written memoranda that could be

exchanged and reviewed by the litigants before or after submitting them to the court. However, most courts tend to depend on written memoranda more than oral pleadings, due to time constraints in light of the large number of pending claims. Generally speaking, the oral aspect mostly prevails over disputes heard before courts of first instance and courts of appeal; however, the written aspect is more prevalent with the court of cassation.

4.5.3. Causation of court rulings

This principle refers to the court's statement of factual evidence and legal grounds, on which the judge has established his ruling (Civil Cassation No. 155, 223, 114, & 137). In other words, it refers to stating the logical preamble, on which the court builds the final result represented in the issued court ruling (Omar, 2016). This causation is considered another aspect of the openness of the judiciary, as it implies the spread of confidence and reassurance in the hearts of all litigants. That is to say, each litigant will be fully aware of the causes and justifications behind the issued ruling, hence enabling each litigant to decide whether he will exercise his right to appeal against this court ruling or not. In addition, this procedure allows the court of the second instance to monitor the rulings issued by the courts of the first instance; consequently, the court of cassation shall be able to monitor them both (Civil Cassation No. 237). Therefore, the causation of court rulings guarantees the "impartiality" of the judge, as well as makes sure of the judge's utmost care for their rulings (Sawy, 2000).

On this basis, the Emirati legislator was keen to stipulate the necessity of causation of court rulings. Article 129/1 of the new Federal Civil Procedure Law No. 42 of 2022 states that: "All court rulings shall include the causes and reasons, on which the ruling has been established; thus, upon the issuance of a court ruling, these causes shall be deposited within the claim's file, signed by the president of the court as well as all attending judges manually or electronically". Furthermore, by virtue of Article 130 of the Federal Civil Procedure Law No. 42 of 2022, "any court ruling shall include an overall display for the following: facts of the claim, requests, and demands of the litigants, a brief summary for the submitted essential defenses, the prosecution's opinion, legal grounds and causes of the issued ruling, and the court's final verdict; taking into consideration that any failures in the causation of the ruling shall lead to the annulment of this ruling".

4.5.4. Publication of court rulings

The publication of court rulings is another aspect of the Emirati judiciary's openness. Generally, it is customary for Supreme Courts (i.e., courts of cassation) to publish their rulings, whether in paper form or electronically.

4.6. The principle of confrontation between litigants

4.6.1. What does confrontation mean?

One of the main principles, on which the Emirati judicial system is established, is for the litigant to carry out all litigation procedures while confronting

the other party of this claim (Al-Qassas, 2010; Khalil, 2013). In this sense, the purpose of this principle is to ensure keeping each litigant informed of what is being conducted by the other litigant, so that each litigant may be able to defend his own interest (Gemie, 1980).

On this basis, the legislator has stipulated that the respondent shall be duly notified of the demands required from him; as the claimant may not make any new requests or modify those demands already mentioned in the submitted statement of claim in the absence of the respondent. In addition, the respondent may not make any demands in the absence of the claimant. Furthermore, by virtue of law, each litigant shall enable the other litigant to have access to the documents submitted to the court in support of his claim. Moreover, according to the provisions of law, the judge is only permitted to establish his ruling, according to the statements made by all concerned parties and the documents submitted to him during the proceedings. That is to say, after hearing the closing argument of each party, the judge may not hear any further statements from either party of this litigation in the absence of the other party; and the judge may not accept any further documents, to which the other litigant had no access.

4.6.2. The purpose of confrontation between litigants

There are two major objectives of this principle (El-Nimr, 1982):

- First: to ensure the due fulfillment of the litigants' right to legal counsel; that is by informing the litigants of all taken procedures, as well as enabling them to respond in this regard; which is mainly meant for the interest of all involved parties.

- Second: to ensure the good functioning and regulation of the judiciary; hence, the judge shall spontaneously pay attention to the fulfillment of this principle, as any violation in this regard shall constitute firm legal grounds for the ruling's annulment based on a breach of the court's public order.

Nevertheless, as an exception to this principle, the new Federal Civil Procedure Law No. 42 of 2022 has permitted some procedures to be carried out, without a confrontation between the litigants; e.g., when applying for an order on a petition (Articles 140-142), or a payment order (Articles 143-150).

4.7. A two-level litigation principle

4.7.1. What is meant by a two-level litigation principle?

According to this principle, a litigant, who fails to receive the desired ruling for his claim before the court of first instance, may recourse again to the court of second instance (i.e., the Court of Appeal), in order to re-raise his dispute again before this court that shall issue a final sentence after hearing the claim (Khalil, 2022). In this context, any litigation shall originally be conducted at two levels, as a judge's ruling in a claim may not be an enforceable judgment; however, another judge may rescind the ruling of the first judge. That is to say, the first judge might be mistaken in

understanding or verifying the facts, or even in interpreting or applying the law. Hence, a litigant who has been negatively affected by such a mistake shall be entitled to re-raise his dispute again before a higher court; and that is in order to rectify this mistake by re-adjudicating the subject matter of his/her claim (Hindi, 2009).

According to the Emirati judicial system, litigation is limited to two levels only; taking into consideration that seeking absolute justice could be infinite. Therefore, if litigation is permitted at several levels, this will eventually lead to perpetual disputes where a rightful claimant can't get his right. Hence, the legal evolution of litigation has stopped at two levels of litigation (Khalil, 2001).

4.7.2. Basics of two-level litigation

The court of first instance may be mistaken in a ruling issued by this court; therefore, it is necessary that such a ruling shall be presented to another level of litigation for reconsideration, hence rectifying any possible mistakes in this regard (Omar, 1980).

The principle of litigation at two levels shall ensure the good functioning of justice; as it urges judges of the courts of the first instance to take their time and care duly for their rulings, lest their annulment or amendment by the courts of the second instance (Omar, 1978).

Hearing the dispute before a second court provides the litigant with a second chance to rectify his/her plan of defense, or to complete any shortcomings in his defense in case of missing any vital aspects in this regard.

4.7.3. Exceptions to the two-level litigation principle

In some cases, a ruling issued by the court of first instance might be non-appealable; which is usually the case with claims of low value (Khalil, 2022). In this case, litigation is often limited to one level only. For example, Article 29/1 of the new Federal Civil Procedure Law No. 42 of 2022 states that "a court ruling issued by the primary circuits shall be considered as a final ruling, if the claim's value is no more than fifty thousand UAE dirhams".

In some cases, the legislator has permitted the claimant to recourse directly to the court of

second instance, without filing his claim first before a court of first instance. For example, a petition for recusing a judge of the court of first instance shall be presented directly to the Court of Appeal (Federal Civil Procedure Law No. 42 of 2022, art. 123); hence, this litigation is limited to the second level only.

5. CONCLUSION

In this paper, we examined the principles that constitute the foundations of judicial governance in the UAE. This paper concludes that there shall be no discrimination between individuals regarding the following rights and guarantees: the right to recourse to the judiciary, the stated procedural rules governing the different judicial disputes, the right to defense as guaranteed by virtue of the constitution and law, and the stated methods for appeal against court rulings. However, the same rights shall have unified rules regarding their litigation, defense, or challenging their provisions. Therefore, the legislator may not state any unjustified discrimination between individuals with regard to the functioning of these rules, in a way that might suspend or restrict these rights for a certain group of people, particularly when it comes to the just adjudication of their rights and obligations.

Our study has several limitations. Firstly, we collected a number of highly significant sources, as well as several court rulings issued by the UAE judiciary. Secondly, we have restricted our study to the UAE judicial governance. Thirdly, we analyzed all relevant legal provisions based on legislation, jurisprudential interpretations, and court decisions. Lastly, several significant results have been included.

Finally, after shedding light on the governance of the judiciary in the UAE, this paper opens future horizons for other researchers to conduct specialized studies on the impact of the governance of the judiciary, the compatibility of the principles that regulate the governance of the judiciary with international standards, the mechanisms for respecting the principle of openness of the judiciary and respect for the right of defense in light of modern technological developments, and the mechanisms of applying the principle of confrontation between litigants during the application of remote trial.

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