

The Development of the Judiciary - Challenges and Outlook

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Introduction

A country's strength ties in with the success of its legislative, judicial and executive authorities. The function of the judiciary is to promote justice and equity through the proper application of laws and regulations in order to give every man his due.

The UAE leaders have demonstrated their interest and commitment to the judiciary since the founding of the UAE by setting up courts and public prosecution departments in all the Emirates and facilitating the work of the judiciary in line with its goals and mission. This has reinforced the UAE's positive image in the international community as a country with a modern system of justice that is fair and impartial regardless of gender, religion or colour.

Developments

The UAE judiciary has undergone many changes over the years and is still being developed to effectively administer justice, consistent with the government's general policy towards its various sectors. Besides the establishment of courts and the enactment of legislation, the introduction of electronic services has facilitated many aspects of the litigation process with courts being able to dispense justice quicker to the point that swift case resolution and service quality have become the norm despite heavy caseloads. Among the developments witnessed by the judiciary over the past few years is the diversity of cases. Specialized courts and special committees have been established and assigned to handle certain types of cases with unique features. These developments extend beyond the work of the courts and encompass the public prosecution and its services, particularly online services.

The developments further encompass the work of lawyers and legal consultants. There has been a growing interest in regulating the legal profession in what seems to be a serious move towards advancing the profession given the importance of this vital sector and its influential role in the judicial system.

Challenges

While it is important to discuss the developments witnessed by the judiciary, the question remains: Are these achievements the pinnacle of our ambitions and aspirations or does the work of the judiciary still face many challenges which need to be overcome?

Of course, there are many challenges to overcome in order to prove the ability of the judiciary to keep pace with the developments and plans the UAE is pursuing as an active member of the international community.

The judiciary is one of the most important factors in the success of any country aspiring to attract investment and build successful international relations. A fair and modern judicial system is needed to gain the confidence of the international community. Hence, responsibility for the development of the judiciary does not rest with any particular entity or department in the UAE and requires collective action on the part of several entities in order to reach the desired end. The efforts required to achieve that end and overcome the challenges of the next phase include:

The Role of the Ministry of Justice:

This Ministry has complete oversight of the courts and prosecution departments across the federation in terms of recruiting judges and organising the work of the courts and prosecution departments. In addition to the recruiting, the Ministry regulates and licenses lawyers, experts and interpreters.. First and foremost the Ministry of Justice's responsibility to develop the work of the judiciary are highlighted in the following examples below:

1. Propose and implement amendments to the rules of procedure for civil and criminal litigation as would serve the interests of justice and the public good, taking into account international best practices that do not conflict with the public order of the UAE and are consistent with the rules of justice and equity.
2. Operate a more practical online service where online services are used, not only to register cases and file applications, but to create an online forum for hearing witnesses and experts from outside the UAE within statutory guidelines that are first codified then implemented over a transitional period in which case documents can be filed online to help ease the paper load of the court and prosecution system.
3. Hire judges who possess a high degree of legal acumen especially with regard to commercial transactions which are peculiar to the UAE as a business hub located at the crossroads of east and west. In addition to attracting the right experts in procedural laws, we need to attract specialists in diverse fields such as e-commerce, banking, real estate, maritime law and insurance law not to mention educating and qualifying a new generation of UAE judges specialising in the above fields. Deciding to have specialist courts is quite beneficial but it would be even better if we could have a qualified judicial cadre with a high level of specialisation in the above fields and other legal fields so that the call for establishing specialist courts can come to fruition with practical results. Likewise, with the public prosecution, there is a need to qualify a new generation of public prosecutors to deal with modern crimes of an exceptional nature. Criminal law is now a different discipline in terms of both methodology and subject matter. Today, an innovative approach is necessary to investigate the new forms of crime which are on the rise e.g. cyber crime, corruption, fraud and deception in commercial transactions, human trafficking and terrorism.
4. In terms of lawyers, experts and interpreters, the role of the ministry should extend beyond granting and renewing licences to administering practical and theoretical assessment tests for individuals who wish to become licenced professionals. Drawing from my experience, I recall ten years ago, there was a shortage of lawyers and the government had to steer law graduates towards the profession in order to fill the void. With that trend reversed, the ministry can now focus on quality rather than quantity. It is now time to prepare our young people to take the lead in this profession by subjecting them to theoretical and practical tests for a period of at least a year which would culminate in their admission to practice before the trial courts, as is the current practice. The immediate focus, moving forward, should be to implement a minimum number of professional development courses and professional conferences which lawyers need to attend each year in order to renew their licences (continuing education) with the aim of enhancing their personal and professional skills in keeping pace with developments in the larger legal industry and the economy, thus developing both the profession and the skills of the practitioner. Likewise, with experts, only the best experts and interpreters should be licenced and accredited by the Ministry of Justice. Assistance can be sought from international auditing and consulting firms in the UAE to develop the work of experts in the fields of accounting, engineering consulting, auditing and various other disciplines, using timelines and practical programs designed to raise the standard of their work which is important to most cases before the UAE courts

The Role of Universities and Judicial Institutes- Recommendations

University law schools in the UAE have a responsibility to develop both the theoretical and practical knowledge of their students as follows:

1. By giving students the option of specialising in different aspects of the law instead of requiring them to study general law. I propose that students be required to undergo a study of general law over the first two years with the option of studying a particular area of law in detail and depth. To specialise and excel in a particular area of law is far better than having a general overview of laws which the student may never encounter in his professional career. This approach is not unusual and many professions,

- including medicine and engineering, believe in specialisation and apply it from the time of study.
2. Law students should be proficient in both the Arabic and English languages for several reasons, including the nature of commercial transactions in the UAE and the make up of its business community. In all cases, the student will need English especially if he wishes to pursue postgraduate studies in the future. Many modern laws relating to emerging transactions originate in foreign jurisdictions which are ahead of us in terms of practical experience. Finally, let us not forget that the UAE judicial community includes a court that operates in English with a legal framework based on English law. Why not train the next generation of lawyers and judges to make appearances and take up posts in such courts? To that end, the student would first need to train at university level, then complete his professional practice at the Institute of Judicial Studies before taking up practice as a lawyer, judge or legal consultant.

The Role of Judicial Training Institutes and Legal Institutions:

1. Training institutes play an instrumental and important role in the qualification, education and training of members of the judiciary through a continuous series of courses, conferences and seminars. However, training institutes will need to play a more positive role through partnering with international bodies and organisations to host an annual conference in the UAE on various legal issues of concern to all segments of the legal and judicial community so that members of the judiciary can keep abreast of the latest international developments and practices in business transactions, commercial and civil litigation, and criminal law. We propose that such an initiative be conducted between the Federal Institute of Training & Judicial Studies and the Dubai Judicial Institute.
2. Training institutes should be given wide and comprehensive powers to develop training courses and programs (continuing education) for members of the judiciary including judges, public prosecutors, lawyers and even legal consultants. The training would be made compulsory for promotion (of judges) and for the renewal of licences (for lawyers and legal consultants). This suggestion is to be measured not so much by the obstacles and difficulties that may come as by our commitment to the advancement of the UAE legal community through development and the pursuit of excellence.

The Role of Law Firms:

UAE based law firms and multinational law firms have an important role to play within the UAE judicial system as a key component which, apart from providing services to their clients, can significantly contribute to the effectiveness and performance of the UAE judiciary in the following ways:

1. Facilitating the professional development of new lawyers and consultants with theoretical and practical training with a view to qualifying interns and acquainting them with the core values and basic principles of the profession.
2. Partnering and cooperating with judicial training institutes by sending lawyers and consultants to attend their conferences and seminars and selecting experienced in-house lawyers and consultants to participate as speakers and lecturers in such conferences and seminars.
3. Partnering and cooperating with judicial training institutes by hosting in-house qualification and training workshops for lawyers which acquaint them with methods and procedures for effectively managing law firms across their administrative, financial, marketing and other functions.
4. Partnering and cooperating with universities through the development of joint programs for visiting lecturers to speak at faculties of law on the practical aspects of enforcing various procedural and special laws in order to give students a solid understanding of how such laws might apply in practice.
5. Arranging for lawyers and legal consultants to attend courses and international seminars and conferences abroad and encouraging their participation as speakers and delegates. In addition to the obvious marketing benefits for the law firm, there is also an educational benefit for participants who are kept abreast of the latest global developments in their field.

In summary, this overview of the contribution various parties can make to the development of the judiciary underscores our appreciation for the ongoing efforts to improve the functioning of the judiciary. As mentioned earlier, we do realise that there are still many challenges ahead if the industry is to reach the

desired objectives. Concerted efforts are needed in order to advance the UAE legal community as a world-class centre of professional excellence.