

Functions of the Federal Supreme Court

by Mohamed Al Marzouqi - m.almarzouqi@tamimi.com - Abu Dhabi
Omar Khodeir - o.khodeir@tamimi.com - Dubai International Financial Centre

November 2015

Overview of UAE Court Structure

The UAE consists of seven emirates, together forming the Union and the UAE as a whole. Accordingly, the Union is considered a federal system for sharing sovereignty between a central governing authority and several different emirates.

When the Union was being formed, the Constitution was drafted to allow for each emirate, in addition to being affiliated to the federal system, to establish its own local courts. This option was sought by three emirates, namely Ras Al Khaimah, Abu Dhabi and Dubai, which have all established their own local courts.

However, there are specific circumstances in which it is mandatory for the Federal Courts in Abu Dhabi to adjudicate on a given matter. For example, a claim against a private company in Abu Dhabi would normally be filed before the local Abu Dhabi Court of First Instance. Where the defendant is a federal body, the claim has to be filed before the Federal Court of First Instance in Abu Dhabi.

Whether local or federal, all court systems are three-tiered, meaning that there are Courts of First Instance, Courts of Appeal and Courts of Cassation in both systems, as shown in the illustration above.

Federal Supreme Court

At the top of the federal court system is the Federal Supreme Court ("FSC"). Normally, the FSC looks into challenges made by litigants to judgments issued by the Federal Court of Appeal. Exclusively, the FSC retains jurisdiction, in certain circumstances, over exhaustive matters that no other type of UAE court could look into. For the purpose of this article, we shed some light on some of these matters.

Article 99 of the UAE Constitution states that the FSC shall decide on the following matters:

1. Disputes among the member emirates of the UAE, or between any one or more emirates and the federal government, if the dispute is referred to the Court upon the request of any of the concerned parties.
2. The constitutionality of a federal law if it is appealed by one or more emirates on the ground that it is in conflict with the constitution of the UAE. The Court shall also consider the constitutionality of legislation enacted by an emirate if it is appealed by a federal authority on the ground that it is in conflict with the constitution of the UAE or federal laws.
3. The constitutionality of laws, legislations and regulations in general, if it is so requested by any court in the country while hearing a relevant claim. The concerned court shall comply with the judgment of the Federal Supreme Court rendered in this respect.
4. The interpretation of the provisions of the cConstitution, if it is so requested by any federal authority or by the government of any emirate. Any such interpretation is binding on everyone.
5. The accountability of ministers and senior officials of the UAE appointed by Decree for their actions while performing their official duties upon the request of the Supreme Council and in

accordance with the relevant law.

6. Criminal cases that directly affect the interests of the UAE, such as crimes relating to the UAE's internal or external security, forgery of official documents or seals of a federal authority, and counterfeiting of currency.
7. Claims of conflict of jurisdiction between a federal court and the court of an emirate.
8. Claims of conflict of jurisdiction between courts of different emirates. The rules governing these claims shall be regulated by federal law.
9. Any other responsibilities provided in the Constitution or which may be referred to the Federal Supreme Court by a Federal Law.

Consequently, and in certain circumstances, any matter touching upon the above issues would be reviewed, exclusively, by the FSC.

The following cases provide some examples of the work of the FSC:

Accountability of UAE Minister and Senior Officials / Interpreting the Constitution

Case Study 1:

- Criminal action was initiated against a former minister and others for undertaking unlawful courses of action to ultimately embezzle funds owned by the emirate.
- As the case involved a former minister and accordingly should be reviewed only by the FSC, a preliminary objection concerning lack of jurisdiction was invoked.
- Applying Article 99(4) of the UAE Constitution, the Federal Court of First Instance issued a preliminary judgement to stay the proceedings and refer the case to the FSC, requesting it to interpret a provision from the UAE Constitution. The provision was the last sentence of paragraph five of Article 99 of the Constitution, which concerns the accountability of ministers and senior officials. This interpretation was a key issue so as to determine which court has jurisdiction of this issue.
- The FSC noted that, pursuant to Article 99(5), it does have jurisdiction to look into the accountability of ministers and senior officials. However, such jurisdiction is subject to the satisfaction of two conditions. The first one is to initiate such proceedings by virtue of an application from the UAE Supreme Federal Council. The second condition is to issue a private law concerning the accountability of ministers and senior officials of the Union.
- As the foregoing two conditions were not satisfied in this case, the FSC interpreted Article 99(5) of the Constitution as being inapplicable to the facts of this case. Thus, the Federal Court of First Instance had full jurisdiction to review this case.

Crimes relating to UAE's security

Photographing restricted areas without approval

Case Study 2:

- Two persons were arrested by a police officer in Fujairah while taking pictures of the Fujairah Airport and the airplanes located there. They confessed that they were attempting to enter the airport to take photographs and that, although they saw a sign prohibiting taking pictures, they chose to ignore it.
- As such acts constitute criminal conduct under the UAE Criminal Law No. 3 of 1987 as amended, the two persons were accused of the same and released on bail pending the completion of the case.
- Although the crimes were committed in the Emirate of Fujairah, which normally means that the Fujairah Criminal Court would possess jurisdiction to review the case, the case was transferred to the FSC for jurisdictional purposes.
- The above crimes are classified as ones relating to state security, which fall under Article 99(6) of

the Constitution, giving the FSC exclusive jurisdiction to decide on their merits.

Case Study 3:

- Similarly to the preceding case, a person took photographs without prior approval from the relevant authority and saved them on his mobile phone. This time, the photographs were of the premises of the UAE military.
- Criminal proceedings were initiated by the Abu Dhabi Public Prosecution and referred to the Abu Dhabi Criminal Court.
- The Criminal Court dismissed the case for lack of jurisdiction and referred it to the Military Public Prosecution to reinvestigate it.
- In turn, and upon completion of the investigation process, the Military Public Prosecution referred the case to the FSC who has exclusive jurisdiction over such cases.

Forgery of official seals and documents:

Case Study 4:

- This case involved forgery of the seal of the UAE Ministry of Foreign Affairs in Dubai.
- During the course of the proceedings before the Dubai Criminal Court, lack of jurisdiction was argued by Dubai Public Prosecution.
- Ultimately, the Dubai Court of Cassation noted that in order for the FSC to have jurisdiction over cases of forgery of official documents and seals, the documents and seals should be issued from one of the federal authorities in the UAE.
- Article 99(6) of the Constitution refers to the FSC having jurisdiction for crimes involving the forgery of seals of the “federal authorities”. However, the Dubai Court of Cassation noted that Article 45 of the Constitution exhaustively lists the federal authorities for the purpose of the Constitution and that the Ministry of Foreign Affairs is not included in the list, which is as follows:
 1. The Federal Supreme Council.
 2. The UAE President and Vice President.
 3. The UAE Council of Ministers.
 4. The Federal National Council.
 5. The Federal Judiciary.
- Accordingly, the forgery of the seal of the Ministry of Foreign Affairs is not a crime affecting the interest of the federation as the Ministry of Foreign Affairs is not one of the federal authorities listed under Article 45 of the Constitution. The Dubai Court of Cassation judgment therefore rejected the argument relating to jurisdiction in this regard.

Having a proper understanding of the UAE Court structure and the competencies of each court system is essential before filing any court case, to avoid any dismissal of your case for lack of jurisdiction or the unnecessary prolonging of the case that may occur in some instances.