

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 4

2026

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The Principle of Separation of Powers in the UAE Constitutional System: Legislative Oversight of the Executive and the Limits of Legislative Authority in Relation to the Judiciary

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ABSTRACT

This research examines the principle of separation of powers in the constitutional system of the United Arab Emirates, with particular emphasis on the nature and effectiveness of legislative oversight of the executive and the constitutional limits governing legislative involvement in judicial affairs. The study adopts descriptive-analytical, historical, comparative, and critical approaches. It analyzes the constitutional distribution of federal authority, the legislative participation of the UAE Council of Ministers and the Federal National Council (FNC), the FNC's oversight mechanisms, and the constitutional and legislative guarantees of judicial independence. Limited comparative references are used to clarify the distinctive features of the UAE model rather than to treat a foreign parliamentary system as a normative benchmark. The research finds that the UAE constitutional order reflects a flexible and functionally differentiated separation of powers. Institutional interaction is particularly visible in the legislative process and in the FNC's oversight of the executive through questions, discussion of general issues, and recommendations. However, the legal effect of several oversight outputs remains limited, giving the model a predominantly cooperative and consultative character. In relation to the judiciary, legislative authority extends to the regulation of courts, jurisdiction, and procedures but is constitutionally constrained by judicial independence. The study concludes that the effectiveness of the UAE model lies in balancing institutional cooperation with functional autonomy, while recommending stronger follow-up mechanisms for parliamentary oversight and continued protection of the core of judicial independence.

Keywords: *separation of powers, UAE constitutional law, Federal National Council, legislative oversight, executive authority, judicial independence, flexible separation of powers*

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I. INTRODUCTION

The separation of powers is a foundational principle of constitutional organization. Its central purpose is to distribute public functions among distinct institutions in a manner that limits the concentration of authority and supports institutional balance. Modern constitutional practice, however, rarely reflects an absolute institutional separation. Instead, many constitutional systems combine functional differentiation with varying forms of cooperation, mutual influence, and oversight. The United Arab Emirates offers a distinctive federal constitutional model in which the distribution of authority is accompanied by structured interaction among the federal institutions.

Article 45 of the UAE Constitution identifies five federal authorities: the Federal Supreme Council, the UAE President and Vice President, the UAE Council of Ministers, the Federal National Council, and the Federal Judiciary. The Constitution does not formulate a single general clause declaring a rigid separation of powers; rather, its allocation of competences reveals a flexible functional arrangement. The Council of Ministers, although the federal executive body, proposes federal draft laws and submits them to the FNC. The FNC, in turn, discusses draft laws and may approve, amend, or reject them, while also exercising oversight functions in relation to the Government. At the same time, the Constitution expressly protects judicial independence.¹

II. RESEARCH PROBLEM AND QUESTIONS

The research problem arises from the cooperative and interdependent character of the UAE constitutional structure. The overlap of certain institutional competences raises questions about the nature of separation of powers in the UAE and about its effect on the scope and effectiveness of legislative oversight. The issue is particularly significant when distinguishing between the oversight exercised by the FNC in relation to the executive and the regulatory role of legislation in judicial affairs, where constitutional guarantees restrict interference with judicial independence.

The principal research question is: To what extent does the flexible separation of powers determine the nature and limits of legislative oversight in the UAE constitutional system?

- What is the legal and constitutional meaning of the principle of separation of powers?
- How did the principle develop from rigid separation toward flexible separation and institutional cooperation?

¹ U.A.E. Const. arts. 45, 60, 89.

- How is the relationship among the federal authorities organized under the UAE Constitution?
- What are the principal mechanisms through which the FNC exercises oversight in relation to the executive?
- How effective are those mechanisms in practice and in legal effect?
- What are the limits of legislative authority in judicial affairs in light of the constitutional guarantees of judicial independence?
- To what extent does the UAE model achieve a balance between institutional cooperation and functional autonomy?

III. RESEARCH OBJECTIVES

- To clarify the constitutional and legal foundations of the separation of powers.
- To trace the historical development from rigid to flexible conceptions of separation of powers.
- To analyze the UAE constitutional model of institutional interaction and balance.
- To examine the FNC's principal oversight mechanisms in relation to the executive.
- To identify the limits of legislative regulation in judicial affairs under the guarantee of judicial independence.
- To assess the effectiveness of legislative oversight within the UAE constitutional framework.
- To highlight the distinctive features of the UAE model through limited and functionally relevant comparative analysis.

IV. METHODOLOGY

The research primarily employs a descriptive-analytical method through the examination of constitutional, legislative, and regulatory texts governing the relationship among the UAE federal authorities, particularly the provisions concerning the FNC's legislative and oversight functions and the independence of the judiciary. A historical method is used to trace the intellectual and constitutional development of the separation-of-powers doctrine. A comparative method is employed in a limited manner to illuminate the distinctive features of the UAE model through selected parliamentary oversight practices in comparative systems. Finally, a critical method is used to evaluate the effectiveness and limits of legislative oversight and the extent to which the constitutional framework balances institutional cooperation with the autonomy of each authority.

V. CONSTITUTIONAL FRAMEWORK: FLEXIBLE SEPARATION OF POWERS IN THE UAE

The UAE constitutional structure supports an understanding of separation of powers as functional rather than absolute. Article 60 provides that the Council of Ministers, as the executive body of the UAE, proposes federal draft laws and submits them to the FNC before the subsequent constitutional stages of approval and ratification. Article 89 provides that federal draft laws are presented to the FNC, which may approve, amend, or reject them. These provisions demonstrate that participation in federal lawmaking is constitutionally distributed among several institutions rather than vested exclusively in a single body.²

This interaction should not be understood as eliminating institutional differentiation. Rather, it illustrates a flexible model in which cooperation is constitutionally structured. The significance of this model becomes particularly clear when legislative participation is distinguished from oversight. The FNC participates in the consideration of federal draft laws, while Articles 92 and 93 provide distinct mechanisms for discussing general issues, making recommendations, and directing questions to members of the Government. The constitutional design therefore combines legislative participation, governmental accountability mechanisms, and functional limits.³

The lawmaking process illustrates this point. The executive participates at the initiation stage through the Council of Ministers, while the FNC exercises a constitutionally recognized deliberative role over federal draft legislation. The subsequent involvement of other federal authorities in the constitutional process further demonstrates that federal legislation results from a sequence of institutional acts. The distribution of these acts reflects checks, participation, and cooperation rather than the exclusive ownership of the legislative function by one institution. For this reason, the FNC should not be described in the same terms as a legislature operating within a conventional parliamentary model; its constitutional position must be understood within the UAE's own federal structure.

Article 45 is particularly significant for the analytical framework of this study because it does not simply reproduce a conventional three-branch formula. Instead, it identifies five federal authorities and leaves the distribution of their functions to the detailed constitutional provisions that follow. The constitutional structure must therefore be assessed by examining how powers are allocated and connected in practice. This approach explains why the UAE model cannot be

² U.A.E. Const. arts. 60, 89.

³ U.A.E. Const. arts. 92–93.

accurately described either as a system of complete institutional separation or as one in which constitutional functions are undifferentiated. The relevant constitutional question is the degree and purpose of interaction permitted between particular authorities.

A. Literature review and research gap

Existing Arabic-language scholarship has examined several dimensions of the UAE constitutional structure. Studies on the separation of powers have addressed the constitutional distribution of federal authority and the cooperative relationship among institutions. Other research has focused more specifically on the Federal National Council's oversight tools, including parliamentary questions and the discussion of governmental activity. A further strand of scholarship has considered the constitutional and legislative guarantees of judicial independence. These contributions provide important foundations, but the literature remains comparatively limited in integrating the three dimensions that are central to this study: the flexible character of separation of powers, the effectiveness and limits of legislative oversight of the executive, and the constitutional boundary between legislative regulation and judicial independence.⁴

This study addresses that gap by treating these dimensions as parts of a single constitutional relationship. It therefore does not ask only whether oversight mechanisms formally exist. It also considers their legal effect and institutional operation, and it distinguishes executive oversight from the regulation of the judicial framework. The comparative method is used selectively to clarify the distinctive features of the UAE model rather than to assume that a conventional parliamentary system provides the sole standard against which the UAE constitutional structure should be judged.

The recent literature also supports the need for an integrated analysis. Scholarship on the UAE has examined the management of relations among constitutional authorities, the separation-of-powers principle under the UAE Constitution, and mechanisms for achieving balance among constitutional institutions. A 2021 master's thesis devoted specifically to parliamentary oversight of administrative activity in the UAE provides a comparative treatment of oversight instruments. These works demonstrate a sustained scholarly interest in institutional balance, but they approach the subject from different angles. The present study brings those strands together

⁴ Ali Rashid Salem Bin Nayeh Al-Tunaiji, *The Principle of Separation of Powers in the Constitution of the United Arab Emirates*, 9 J. POL. & ECON. 135, 135 (2020) (in Arabic), <https://doi.org/10.21608/JOCU.2019.91599>; Engy Ahmed Abdul-Ghani Mustafa, *Managing the Relationship Between Authorities in the United Arab Emirates*, 5 J. POL. & ECON. 33, 35 (2019) (in Arabic), <https://doi.org/10.21608/JOCU.2019.91590>.

by linking constitutional structure, oversight effectiveness, and judicial independence within a single analytical framework.^{5,6}

VI. LEGISLATIVE OVERSIGHT OF THE EXECUTIVE AUTHORITY

The Federal National Council's oversight role is constitutionally distinct from its participation in the legislative process. Under Article 92 of the UAE Constitution, the FNC may discuss general matters concerning the affairs of the UAE and may issue recommendations. The constitutional framework nevertheless preserves an important governmental role: where the Council of Ministers does not approve a recommendation, it is required to inform the FNC of the reasons for doing so. This structure demonstrates that oversight exists within an institutional framework of dialogue and accountability, while the legal force of the resulting recommendations remains limited.⁷

Article 93 provides another principal oversight mechanism by allowing members of the FNC to direct questions to the Prime Minister, a Deputy Prime Minister, or the competent minister on matters falling within their respective responsibilities. The FNC Rules of Procedure further regulate this mechanism. Article 140 defines the scope of questions, while Article 145 gives the questioner a right of brief follow-up twice, with the competent minister having the final reply. The significance of parliamentary questions therefore lies not only in obtaining information, but also in creating an institutional record of governmental explanation and allowing representatives to pursue clarification on matters of public concern.^{8,9}

A. Parliamentary questions and interactive oversight

The question mechanism illustrates the interactive character of legislative oversight in the UAE model. It enables an FNC member to request an explanation from the competent member of Government and, within the procedural framework established by the Council's rules, to comment on or follow up the response. This form of oversight is therefore more than a unilateral request for information; it establishes a structured exchange between the representative institution and the executive.

⁵ Talal Hussein Al Ansari & Sam Suleiman Dallah, *Mechanisms for Achieving Balance Between Constitutional Institutions in Light of the UAE Principles of the 50*, 22 U. SHARJAH J. LEGAL SCI. 227, 227 (2025) (in Arabic), <https://doi.org/10.36394/jls.v22.i1.10>.

⁶ Munira Al-Shaibani, *Tools of Parliamentary Oversight over Administrative Activities in the United Arab Emirates: A Comparative Study* (2021) (Master's thesis, Abu Dhabi University) (in Arabic), <https://repository.adu.ac.ae/items/119548d9-9997-46f3-984b-a654a91fded9>.

⁷ U.A.E. Const. art. 92.

⁸ *Id.* art. 93.

⁹ President of the U.A.E. Resolution No. 11 of 2023 Concerning the Rules of Procedure of the Federal National Council, arts. 140, 145 (U.A.E.).

From a comparative perspective, parliamentary questions are also a central mechanism of governmental scrutiny in parliamentary systems such as the United Kingdom, where ministerial questions, debates, and committee work are used to examine governmental action. The comparison should not, however, be reduced to whether a recommendation is legally binding. Parliamentary committee recommendations in the United Kingdom are not, by themselves, legally binding on the Government. The more relevant distinction concerns the broader institutional environment of accountability, including follow-up practices, transparency, political responsibility, and the relationship between the Government and the representative body. The UAE model should therefore be assessed according to its own constitutional structure rather than measured mechanically against a conventional parliamentary system.^{10,11}

The comparative inquiry is therefore functional rather than transplant-oriented. It asks how a similar oversight device operates within different constitutional relationships and what that comparison reveals about the UAE arrangement. The purpose is not to recommend the wholesale adoption of parliamentary conventions developed elsewhere. Rather, comparison helps distinguish features that arise from the legal form of the oversight instrument from those that depend on the surrounding political and constitutional structure.

B. Discussion of general issues and recommendations

The FNC's power to discuss general issues broadens oversight beyond individual questions. It permits the Council to examine matters of federal public policy and to formulate recommendations. This mechanism may contribute to identifying implementation difficulties, bringing public concerns into institutional debate, and encouraging governmental reconsideration of policy choices. Yet the constitutional treatment of recommendations also illustrates the limits of the FNC's coercive authority: the Government may decline to adopt a recommendation, subject to the constitutional requirement to communicate the reasons for that position.

Accordingly, the effectiveness of oversight cannot be evaluated solely by asking whether the FNC possesses formal instruments. A more complete assessment requires attention to the practical consequences of those instruments: the quality and timeliness of governmental responses, the availability of follow-up, the transparency of the exchange, and the extent to

¹⁰ UK PARLIAMENT, *Checking the Work of Government*, PARLIAMENT.UK, <https://www.parliament.uk/about/how/role/scrutiny/commons-checking-work-of-government/> (last visited Aug. 24, 2026).

¹¹ UK PARLIAMENT, *Select Committees*, PARLIAMENT.UK, <https://www.parliament.uk/about/how/committees/select/> (last visited Aug. 24, 2026); HOUSE OF COMMONS COMMITTEE OF PRIVILEGES, *Select Committees and Contempts*, HC 401, ¶ 10 (2022–23), <https://publications.parliament.uk/pa/cm5803/cmselect/cmprivi/401/report.html>.

which recommendations influence subsequent policy or administrative action. On this basis, the UAE oversight model may be characterized as institutionally meaningful but predominantly cooperative and consultative rather than coercive.

The UAE model is consequently better characterized in terms of dialogic accountability. Its oversight mechanisms facilitate an exchange between the FNC and the executive, while the constitutional framework preserves the executive's ability to maintain a different policy position in relation to recommendations. This structure is consistent with the broader cooperative character of the constitutional order. At the same time, it makes procedural follow-up especially important: where legal compulsion is limited, transparency, reasoned responses, and continuity of parliamentary attention become central to the practical value of oversight.

This distinction between the existence of an oversight power and its practical effectiveness is important. A constitutional mechanism may have substantial informational and political value even where it does not culminate in a legally binding direction to the executive. Questions can require public explanation; discussion of general issues can place policy concerns on the institutional agenda; and recommendations can create a documented position to which the Government must respond. The absence of a direct coercive consequence therefore does not render these tools meaningless. It does, however, affect the type of accountability they are capable of producing.

VII. LEGISLATIVE AUTHORITY AND JUDICIAL INDEPENDENCE

The relationship between legislative authority and the judiciary requires a different analytical framework. Legislative oversight of the executive should not be equated with oversight of judicial decision-making. Article 94 of the UAE Constitution establishes judicial independence and provides that judges, in the performance of their duties, are subject only to the law and their conscience. The constitutional guarantee is reinforced by Federal Decree-Law No. 32 of 2022 on the Federal Judicial Authority, which regulates the federal judicial system while preserving the independence of judges and the administration of justice.¹²

A. Judicial independence as a constitutional limit

Judicial independence performs both an institutional and an individual function. Institutionally, it protects the judiciary from interference by the political branches in the exercise of adjudicative authority. Individually, it protects judges in deciding cases according to law

¹² U.A.E. Const. art. 94; Federal Decree-Law No. 32 of 2022 Concerning the Federal Judicial Authority, art. 1 (U.A.E.).

without improper influence. These guarantees are essential to the rule of law and to the constitutional distribution of public functions.

The existence of legislative authority to regulate the judiciary does not contradict this independence. The legislature may establish the legal framework governing courts, jurisdiction, litigation procedures, judicial administration, and related institutional matters. The constitutional boundary is crossed only when regulation becomes interference with the substance of adjudication or compromises the independence required for the judicial function.

B. Regulation is not judicial oversight

This distinction is central to the present research. The expression ‘legislative oversight of the judiciary’ can be misleading if it suggests that the FNC or another political institution may supervise judicial judgments or direct judges in individual cases. The more accurate constitutional characterization is that legislative authority may regulate the institutional framework of the judiciary, while the adjudicative function remains protected by constitutional guarantees of independence.

The UAE model therefore demonstrates a functionally differentiated form of flexible separation of powers. Interaction is broader in the relationship between the representative and executive institutions, where questions, discussions, recommendations, and legislative participation create multiple points of institutional contact. By contrast, interaction narrows when it reaches the core of the judicial function. Flexibility does not eliminate boundaries; it operates within boundaries defined by the Constitution.

This differentiated approach strengthens, rather than weakens, the thesis of flexible separation. Flexibility concerns constitutionally authorized interaction; it does not imply that every authority may exercise the same degree of influence over every other authority. The permissible intensity of interaction depends on the function at stake. Legislative and executive functions contain constitutionally designed points of participation and accountability, whereas adjudication requires a protected decisional sphere. Judicial independence therefore operates as an internal boundary within the broader model of cooperative constitutionalism.

The distinction also prevents a conceptual error that could otherwise arise from using the same expression, legislative oversight, for both executive and judicial relations. Oversight of the executive concerns political and administrative accountability within the constitutional competences of the FNC. In the judicial context, the relevant legislative function is principally normative: establishing the legal architecture within which courts operate. Constitutional

protection of judicial independence means that the existence of legislative rules governing courts cannot itself be treated as evidence of political supervision of judges.

VIII. OVERALL ASSESSMENT OF THE UAE MODEL

The constitutional arrangements examined in this study reveal that the UAE does not follow a model of rigid institutional separation. Nor does institutional cooperation imply the absence of meaningful differentiation among public functions. The federal constitutional order instead combines shared participation in certain processes with distinct areas of authority and specific constitutional safeguards.

In the legislative process, the Council of Ministers initiates federal draft legislation and the FNC considers those drafts within the constitutional process. In oversight, the FNC possesses mechanisms for questioning members of Government and discussing general matters. In the judicial sphere, legislation organizes the institutional framework while judicial independence limits interference with adjudication. Taken together, these features support the characterization of the UAE system as one of flexible, cooperative, and functionally differentiated separation of powers.

IX. FINDINGS

1. The UAE constitutional system reflects a flexible rather than rigid separation of powers, combining functional differentiation with structured institutional cooperation.
2. The federal legislative process demonstrates constitutionally organized participation by more than one federal authority.
3. The FNC possesses constitutionally and procedurally recognized oversight mechanisms, particularly parliamentary questions, discussion of general issues, and recommendations.
4. The legal effect of several oversight outputs is limited, although their political, informational, and institutional effects may remain significant.
5. The effectiveness of oversight depends not only on the formal existence of mechanisms but also on governmental responsiveness, transparency, and follow-up.
6. Judicial independence is protected constitutionally and legislatively and constitutes a substantive limit on political or legislative interference with adjudication.
7. Legislative regulation of courts and judicial procedures is constitutionally distinguishable from supervision of judicial decisions.

8. The degree of permissible institutional interaction is therefore not identical across all branches: it is broader in executive-legislative relations and narrower at the core of the judicial function.

X. RECOMMENDATIONS

1. Strengthen procedural mechanisms for following up governmental responses to FNC questions and recommendations.
2. Enhance transparency regarding the Government's treatment of parliamentary recommendations and the reasons for declining them.
3. Develop the practical effectiveness of oversight mechanisms without disturbing the cooperative constitutional character of the UAE system.
4. Maintain a clear legal distinction between legislative regulation of the judiciary and interference with adjudicative independence.
5. Continue reviewing legislation governing the federal judiciary to ensure that institutional development remains consistent with constitutional guarantees of judicial independence.
6. Encourage further comparative constitutional research on legislative oversight in federal and Arab constitutional systems using functionally comparable institutions.

XI. CONCLUSION

The principle of separation of powers in the UAE constitutional system is best understood as a flexible and functionally differentiated constitutional arrangement. The Constitution distributes federal authority among distinct institutions while simultaneously creating channels of cooperation in legislation and accountability. The FNC's role illustrates this dual character: it participates in the consideration of federal legislation and exercises oversight of the executive through constitutionally recognized mechanisms, yet many of its oversight outcomes operate through dialogue, recommendation, and institutional influence rather than direct legal compulsion.

The judiciary occupies a different constitutional position. Although legislation necessarily regulates the judicial framework, the constitutional guarantee of judicial independence limits the permissible reach of political institutions into the adjudicative function. The UAE model therefore demonstrates that flexible separation does not mean unlimited institutional overlap. Its constitutional logic depends on calibrating the degree of interaction according to the function

involved. Improving the effectiveness and transparency of legislative oversight while preserving the protected core of judicial independence would further strengthen this balance.
