

Right to Movement and Residence in the UAE from the Perspective of Human Rights Law

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Abstract:

Freedom of movement and residence is one of the most important freedoms for human beings, and it means the right of every individual in the State to move from one place to another within the borders of the State, as well as the right to leave and return to the borders of his State. The problem of the study is to analyze the impact of international human rights standards and obligations, especially those related to freedom of movement and residence, on the Emirati legal framework regulating these rights, by studying the relationship between national sovereignty and the requirements of conformity with international conventions, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). The study aimed to analyze the framework and extent of the international and local legal provisions of the United Arab Emirates that govern freedom of movement and residence, analyze the scope of the UAE's authority to regulate freedom of movement and residence under normal and exceptional circumstances, and analyze judicial control in the context of the restrictions imposed on freedom of movement and residence in the UAE. The study concluded that the UAE Constitution does not contain an explicit text that enshrines freedom of movement as an independent right, but is implicitly understood from Article (29) of the UAE Constitution, and therefore it is recommended to include a clear constitutional text that guarantees freedom of movement and any restriction thereon is subject to the principles of necessity and proportionality.

Introduction:

General Framework of the Study:

Freedom of movement and residence has received wide attention in international and regional human rights treaties, as it is one of the fundamental pillars on which the system of public rights and freedoms is based in the modern state. The Universal Declaration of Human Rights of 1948 affirms in Article 13 that everyone has the right to freedom of movement and choice of residence within the borders of the State, and the right to leave and return to any country, including his own, and the International Covenant on Civil and Political Rights of 1966 enshrines this right in Article 12, when it stipulates freedom of movement, choice of place of residence and the right to leave any country, subject to the permissibility of these. The European Convention on Human Rights of 1950 confirmed the same trend by guaranteeing freedom of movement and residence and not restricting it except in accordance with the law and the necessities associated with the public interest.

In this context, regulating the entry, residence and expulsion of foreigners is one of the most prominent manifestations of the sovereignty of the State over its territory, as each State has the right to establish legal controls that regulate the presence of foreigners within its territory in order to preserve its security, stability and public order.

Based on this, the UAE legislator was keen to regulate the issue of the entry, residence and deportation of foreigners through a set of constitutional and legislative texts, foremost of which is the Constitution of the United Arab Emirates, which guarantees personal freedom and the rule of law, in addition to the Federal Law No. (6) of 1973 on the Entry and Residence of Foreigners and its amendments, as well as the legislation and procedures related to administrative and judicial deportation, which granted the competent authorities the power to deport a foreigner whenever his presence constitutes a threat to public security, public order or public morals. This authority is for judicial oversight to ensure that it is not misused and to achieve the principle of legitimacy and the rule of law.

The study of deportation in Emirati legislation also raises an important legal problem represented in the extent to which the right of the State to protect its security and sovereignty is reconciled on the one hand, and the need to respect the fundamental rights and freedoms of foreigners on the other hand, especially since deportation may entail a violation of a number of rights of the individual, which necessitates the need to examine the extent to which the UAE legal organization is compatible with international human rights

standards, and the adequacy of the legal and judicial guarantees prescribed to protect individuals from abuse of the power of deportation.

The importance of this study is also highlighted in light of the legislative and judicial developments witnessed by the United Arab Emirates in the field of regulating the residency of foreigners, and in light of the expansion of international relations and the economic and social openness that has made the country an attractive environment for various nationalities, which necessitated the development of a legal system that achieves a balance between the protection of national security and respect for human rights in accordance with contemporary constitutional and international standards.

Hence, this study seeks to analyze the legal organization of deportation in the UAE legislation, and to explain the legal basis on which the state's authority to deport foreigners is based, while studying the constitutional and legal guarantees prescribed for the protection of rights and freedoms, and to show the extent to which the UAE legislation is compatible with international standards related to freedom of movement and residence, through a comparative analytical study that combines legal and jurisprudential rooting and relevant judicial applications.

Study Problem:

Since the establishment of the Union, the United Arab Emirates has been keen to consolidate the principles of justice, the rule of law and respect for human rights, based on the country's constitution, legislative system and civilizational values based on tolerance, coexistence and respect for multiculturalism, which has made it a global model for human coexistence and attracting competencies and labor. The country includes more than 200 nationalities living and working within the UAE society within a framework of security, stability and legal regulation, which reflects the international nature of the UAE society and highlights the importance of having a precise legal framework that regulates the issues of movement, residency and deportation in order to achieve a balance between the protection of rights and freedoms on the one hand and the maintenance of security and public order on the other hand (Federal Authority for Identity, Citizenship, Customs and Ports Security, 2024).

Article (29) of the UAE Constitution stipulates that: "Freedom of movement and residence shall be guaranteed to citizens within the limits of the law", and the Emirati legislator has regulated this freedom through an integrated legislative system, most notably Federal Law No. (6) of 1973 on the Entry and Residence of Foreigners and its amendments, which dealt with regulating the entry, residence and removal of foreigners from the country, in addition to Federal Decree Law No. (42) of 2022 by promulgating the Civil Procedure Law, which regulated the provisions of the travel ban, its conditions and judicial controls as one of the legal restrictions on freedom of movement in order to protect legal rights and status, as well as Federal Decree Law No. (38) of 2022 promulgating the Code of Criminal Procedure, which included a number of provisions related to deportation from the country, arrest, and precautionary measures related to the protection of security and public order.

Despite the legitimacy of the State's right to regulate the entry, residence and expulsion of foreigners as a manifestation of national sovereignty, the legal problem arises as to the extent to which the discretion granted to the administration and the competent authorities in matters of deportation, travel bans and arrests is consistent with constitutional guarantees and international human rights standards, especially in cases where these powers may be exercised on the basis of security considerations or general assessments without precise legal criteria clearly defining their scope and limits.

It is known that there is a jurisprudential trend that believes that the expansion of international restrictions on the power of the state to regulate the affairs of foreigners may be considered a violation of the concept of national sovereignty, considering that the state remains the original competence to administer its territory and regulate the foreign presence within it, while another jurisprudential trend believes that the development of international human rights law has not abolished the sovereignty of the state, but has reformulated it within the framework of a legal and moral responsibility that requires states to respect the fundamental rights and freedoms of individuals within their territories (Brownlie, 2008; Shaw, 2017; Henkin, 1990; Cassese, 2005).

The problem of the study is therefore to examine the extent to which the balance between the right of the United Arab Emirates to regulate the entry, residence and deportation of foreigners and the travel ban as a manifestation of national sovereignty, and the adherence to international human rights standards related to freedom of movement and residence, and the limits of international interference in regulating this freedom, and the adequacy of constitutional, legislative and judicial guarantees to protect individuals from the arbitrary use of the powers of deportation, travel ban or arrest within the UAE legal system.

Study Questions:

Right to Movement and Residence in the UAE from the Perspective of Human Rights Law

In light of the problem of the study and the legal problems it raises related to the balance between the sovereignty of the state and the protection of human rights, the study seeks to answer the following questions:

- I. What is the international and domestic legal framework governing freedom of movement and residence in the UAE?
- II. What are the limits of the UAE's authority to regulate and restrict freedom of movement and residence in light of the principles of national sovereignty and international human rights standards?
- III. What is the nature of judicial oversight of decisions and procedures related to freedom of movement and residence, in particular travel bans, administrative detention and deportation decisions in UAE legislation?

Importance of the research:

Scientific Importance:

The scientific importance of this study stems from the importance of the issue of freedom of movement and residence as one of the fundamental rights and freedoms guaranteed by international conventions and national constitutions, because of the close connection between this right and the exercise of other rights and freedoms.

The study also gains its scientific importance from the fact that it deals with the issue of international human rights intervention in the field of freedom of movement and residence in the light of Emirati legislation, by analyzing the relationship between the rules of international human rights law and the principle of state sovereignty, and explaining the limits of the discretionary authority granted to the administration in regulating freedom of movement, residence, deportation and travel bans, and the extent to which these authorities are subject to constitutional and legal controls and judicial control.

The study also contributes to enriching the Arab legal literature related to human rights in the UAE, especially in light of the limited specialized legal studies that directly address the issue of the balance between national security requirements and the protection of freedom of movement and residence in light of the UAE legislation and relevant international conventions, in addition to highlighting the jurisprudential trends in support and opposition to the idea of the intervention of international human rights law in regulating freedom of movement and residence within the country.

The scientific importance of the study is also reflected in the analysis of a number of Emirati legislations related to freedom of movement and residence, foremost of which is the Constitution of the United Arab Emirates, Federal Law No. (6) of 1973 on the Entry and Residence of Foreigners and its amendments, Federal Decree-Law No. (42) of 2022 on the issuance of the Civil Procedure Law regarding the provisions of the travel ban, and Federal Decree-Law No. (38) of 2022 on the issuance of the Code of Criminal Procedure with regard to deportation, arrest and measures restricting freedom, which contributes to the presentation of a legal study An integrated analysis of this topic.

Practical Importance:

The practical importance of this study stems from the importance of the practical application of legal guarantees related to freedom of movement and residence in the UAE, especially in light of the international nature of the Emirati society, which includes more than (200) nationalities from different parts of the world, which necessitates the existence of a precise legal system that achieves a balance between the protection of security and public order on the one hand, and ensuring respect for the fundamental rights and freedoms of individuals on the other hand.

The importance of the study is also highlighted for those working in the judicial, security and administrative bodies, by clarifying the legal and constitutional controls that govern decisions related to freedom of movement and residence, which helps to achieve the proper application of the law in a way that ensures the protection and non-infringement of public rights and freedoms except within the limits permitted by law and in accordance with international standards related to human rights.

The results of this study can also contribute to supporting legislative and judicial efforts to develop the legal system regulating freedom of movement and residence in the UAE, by providing an analytical legal perspective that may help strengthen legal safeguards and achieve a balance between the requirements of national sovereignty and the requirements of human rights protection.

Objectives of the study:

This study aims to achieve the following:

- I. Analyze the international and domestic legal framework regulating freedom of movement and residence in the UAE.
- II. Statement of the limits of the authority of the United Arab Emirates in regulating and restricting freedom of movement and residence in light of the principles of national sovereignty and international human rights standards.
- III. Analyze the nature of judicial oversight of decisions and procedures related to freedom of movement and residence in UAE legislation and indicate their effectiveness in protecting rights and freedoms.

Previous Studies:

First: Studies related to the international and domestic legal framework for freedom of movement and residence

Mahmoud's (2007) study entitled "Freedom of Travel between Release and Restriction" addressed the issue of freedom of travel as one of the most important forms of freedom of movement, where the study focused on the concept of travel ban as one of the legal restrictions on the freedom of movement of individuals, within the framework of Egyptian legislation. Legality. The study also sheds light on the role of the Egyptian judiciary in its various aspects, and this study is similar to the current study in dealing with the legal restrictions on freedom of movement, but the current study differs from it in that it is more comprehensive and broad, as it is not limited to travel bans only, but also deals with various restrictions on freedom of movement and residence, such as deportation, arrest, and precautionary measures, in addition to its focus on judicial control of these decisions in light of the UAE legal system and administrative judiciary.

The study also addressed the position of some comparative legislations, such as the French, Egyptian, and Iraqi legislations, on freedom of movement and the restrictions contained therein, while analyzing the legal basis of judicial control over decisions restricting this freedom. Freedom of movement is one of the fundamental rights that are linked to human rights and public freedoms, and that the restrictions imposed on it must be subject to judicial control to prevent the abuse of power.

Second: Studies on the restrictions on freedom of movement and residence in exceptional circumstances

Al-Zoubi's (2020) study entitled "Emergency Situations and Their Impact on the Restriction of Human Rights in International Law" addressed the subject of restrictions on public rights and freedoms during emergencies, as the study aimed to show the extent of the impact of emergency laws on human rights, including freedom of movement, in addition to highlighting the role of international and human rights organizations in protecting human rights during crises and exceptional cases. The study also recommended the need to subject exceptional measures to international control and ensure their compatibility with the provisions of Article (4) of the International Covenant on Civil and Political Rights.

The study also addressed the restrictions imposed on freedom of movement and residence in the European Union due to the COVID-19 pandemic, as the study aimed to show the legality of the exceptional measures imposed by European countries to limit the spread of the pandemic, and the extent to which these measures are compatible with human rights principles and guarantees established for freedom of movement and residence within the European Union. The present study uses these findings to analyze the legality of the exceptional restrictions imposed on freedom of movement and residence in the light of international law and UAE legislation.

Third: Studies related to judicial control and legal protection of freedom of movement and residence

Mohamed (2021) study entitled "Regulatory Protection of the Right to Freedom of Movement and Physical Safety During Arrest Procedures: A Comparative Study between the Saudi System and Emirati Law" focused on the legal guarantees established to protect freedom of movement and physical integrity during arrest and detention procedures. The study also discussed the compatibility of Emirati and Saudi laws with international standards related to human rights. This study is one of the closest studies to the subject of the current study, but it was limited to arrest and arrest procedures without expanding the study of deportation, travel ban and judicial control over administrative decisions related to freedom of movement and residence in the United Arab Emirates, which seeks The present study is to be completed in a more comprehensive and in-depth manner.

The study focused on the concept of habitual residence and its effects on the social rights of migrants within the EU member states, while showing how residency-related administrative controls can be used to indirectly restrict certain social rights. The present study uses these findings to analyze the impact of legal and administrative regulations on the exercise of freedom of movement and residence, with the different legal and political environment under study.

Fourth: Commenting on previous studies and the research gap

A review of previous studies shows that there is a growing legal and human rights interest in the issue of freedom of movement and residence, both in terms of the legal and constitutional rooting of this right, in terms of the legal and administrative restrictions imposed on it, or in terms of the judicial guarantees established to protect it. Previous studies have also shown a clear interest in examining the relationship between the protection of public order and the requirements of national security on the one hand, and the guarantee of fundamental rights and freedoms on the other hand, especially in light of exceptional circumstances and health and security emergencies.

Therefore, the research gap is represented in the paucity of specialized legal studies that have dealt with the relationship between the rules of international human rights law and the Emirati legal regulation of freedom of movement and residence, while explaining the limits of the authority of the administration and the competent authorities in imposing restrictions on this freedom, and analyzing the role of the UAE judiciary in monitoring decisions and procedures restricting them.

Study Terms:

I. Freedom of movement and residence

It means the right guaranteed to individuals to move freely within the borders of the State, and to choose or leave and return to the place of residence, without arbitrary restrictions, unless such restrictions are based on a clear legal text and take into account the principles of necessity and proportionality (Mansour, 1997).

II. Restrictions on freedom of movement

It refers to: the legal or administrative measures taken by the competent authorities that would limit the individual's freedom of movement or residence, whether by banning travel, deportation, or obliging house arrest in a certain area, and these restrictions are provided that they are legitimate, necessary, and proportionate to the legitimate goal that the state seeks to achieve, such as public security or public order, and be subject to effective judicial control (Saeed, 2020).

III. Judicial Control

It means: the judiciary, especially the administrative judiciary, reviewing the legitimacy of administrative decisions issued by the executive authority, especially those that affect fundamental rights and freedoms, in terms of form and content, and indicating their compatibility with the constitution and the law, and judicial oversight is one of the basic guarantees of the rule of law, and the application of the principle of separation of powers (Al-Yanbawi, 2020).

IV. Restrictive Administrative Decisions

It means: decisions issued by administrative bodies that restrict the enjoyment of an individual's enjoyment of a right, including a decision to ban travel, house arrest, or administrative deportation of foreigners, and the validity of these decisions must be based on a legal text, be reasoned, and subject to judicial appeal (Hatem & Abdul Shaheed, 2008).

V. Exceptional Circumstances/Emergencies

In these cases, some rights, including freedom of movement, may be restricted, provided that the principle of necessity and proportionality is respected, judicial oversight is continued, and the essence of rights is not violated (Gharbi, 2021).

VI. Human rights

A set of international rules and standards based on treaties and international custom, which obligate states to respect, protect and fulfill the inherent and inalienable rights of all human beings, and these rules aim to guarantee dignity, freedom, equality, prohibition of torture and discrimination, and the provision of civil, political, economic, and social rights (Bruzeli, 2018).

Study Methodology:

In this research, the following approaches are adopted: descriptive, analytical, and inductive, by explaining the subject of human rights in detail from its definition to its sources, and it has shown human rights in the international and Arab systems, and human rights in the Constitution of the United Arab Emirates with regard to freedom of movement and residence, with explanation, opinion, and suggestion from the point of view of

the study, with exposure to some laws related to the subject of the protection and preservation of human rights, such as the Code of Criminal Procedure at times, and the Penal Code at other times, and some statistics. The study also included a set of personal interviews with specialists in the legal and human rights fields, with the aim of identifying the reality of the application of freedom of movement and residence in the United Arab Emirates, and analyzing the relevant legislative and institutional frameworks, and in this context, the most prominent features that distinguish the Emirati experience in regulating this right, in terms of the harmony between national legislation and international obligations, without delving into a normative evaluation or recriminative phrases, the study concluded at the end of this chapter to present the results obtained of analysis and interviews, followed by a set of scientific recommendations aimed at developing the legal protection of freedom of movement and residence in line with international human rights principles.

This study relied on the qualitative approach as the most appropriate tool to analyze the issue of the right of movement and residence in the United Arab Emirates from the perspective of human rights law, as the qualitative approach is characterized by its flexibility and high ability to explore complex legal and social phenomena, as it is not limited to measuring the visible quantitative dimensions, but seeks to understand the contexts and influential factors, analyze texts, and explore the contents of the legal discourse through a comprehensive and in-depth approach, and this approach provides the researcher with the opportunity to study the laws and legislations related to freedom of movement and the analysis of practical practices and relevant judicial positions, based on the collection of qualitative and detailed data through semi-targeted interviews with a group of legal experts, including doctors specialized in human rights, practicing lawyers, in addition to a number of judges and legal experts working within the UAE judicial system.

The study was based on a qualitative methodology, using a semi-targeted interview tool to conduct interviews with a group of stakeholders directly related to the issue of freedom of movement and residence in the UAE, and the number of participants was identified as 10 people, representing different categories including law professors, those responsible for implementing migration policies and strategies, and representatives of civil society organizations concerned with human rights.

The study based its analysis on primary legal sources represented in the UAE Constitution, relevant federal laws, executive regulations, judicial rulings, and international and regional conventions and covenants related to human rights, while the secondary sources were legal books, previous studies, refereed scientific articles, and university theses related to the subject of the study. International human rights law.

Field of study:

This study is limited to examining the right to freedom of movement and residence in the United Arab Emirates from the perspective of human rights law, through the constitutional, legislative and judicial organization of the restrictions on freedom of movement and residence, and their compatibility with international and regional human rights standards, with a focus on judicial oversight of administrative decisions related to travel bans, administrative detention, deportation of foreigners, and refusal to grant or renew passports.

The study is also chronologically limited to the period between (2023-2025), a period that witnessed important legislative and judicial developments in the UAE, especially the issuance of Federal Decree-Law No. (29) of 2021 on the entry and residence of foreigners, Federal Decree-Law No. (32) of 2022 on the Federal Judicial Authority, and Federal Decree-Law No. (38) of 2022 promulgating the Code of Criminal Procedure, in addition to a number of recent judicial rulings issued by the Federal Supreme Court and the Courts of Cassation and Cassation In the country.

First Topic: Society and Qualitative Sample:

The qualitative study population consists of all legal experts related to the subject of the right of movement and residence in the UAE, who have practical or academic experience in the fields of human rights, the judiciary, or lawyers, and this community includes multiple groups, most notably university professors specializing in constitutional law and human rights, judges working in national courts, legal advisors, in addition to lawyers who have experience in cases related to movement and residency

The researcher was keen to diversify the sample to include a group of judges in different judicial degrees, a number of members of prestigious academic bodies, as well as practicing lawyers with experience in residency cases, travel bans, or disputes related to freedom of movement, and thus, the selected qualitative sample does not aim to represent society statistically, as in quantitative research, but rather aims to deepen understanding and achieve richness of information by focusing on people who are most capable of providing accurate analytical insights and variety.

Since the nature of the study is based on the methodology of quasi-guided interviews, the interview questions are designed to allow the respondents to express their opinions freely, allowing to reveal the deep aspects associated with legislation and practices related to the right of movement and residence, and

enhancing the reliability and credibility of the results, as it provides context-rich data, practical analyses, and real impressions based on experience and experience. The legal framework for freedom of movement and residence in the UAE in a scientific manner and based on international human rights standards, and the following table shows the members of the selected sample.

Table 5.1 Intentional Sample

Issue	Sample
5	Academic Experts
3	Lawyers
2	Judges

The characteristics of the participants were distributed as follows:

Table 5.3 Characteristics of participants

Interview Duration	Interview location	Interview Date	Experience	Position	Name	Interview Number
45 minutes	United Arab Emirates University Campus	January 2, 2025	22 years	Professor of International Human Rights Law at the United Arab Emirates University	Dr. Emad Abdel Rahim Al-Dahiyat	The first
32 mins	University of Sharjah Campus	January 6, 2025	19	Professor of Constitutional Law, University of Sharjah	Dr. Maryam Al Shehhi -	The second
30 minutes	United Arab Emirates University Campus	14 January 2025	24	Professor of Public Law and Dean of the College of Law at the United Arab Emirates University	Prof. Dr. Fatiha Kourari	The third
45 minutes	Ali Al Khaja Law Office	22 January 2025	16	Lawyer	Dr. Ali Al Khaja	Fourth
Continue...						
...To continue						
36 mins	Mohamed Mulla Advocates & Legal Consultancy	29 January 2025	33	Lawyer	Dr. Mohammed Al , Mulla	Fifth
25 minutes	BY CALLING VIA ZOOM APP	13 February 2025	21	Lawyer	Dr. Yousef Al Marzouqi	Sixth
42 minutes	In his office at the Court of Appeals	11 March 2025	32	Court of Appeals Judge	Abdullah Karam Ahmed Ali	Seventh
40 minutes	Al Ain University Campus	17 March 2025	18	Professor of Criminal Law at Al Ain University	Dr. Suad Al Tayer	Eighth

38 mins	Ministry of Justice Headquarters in Abu Dhabi	23 March 2025	27	Legal Advisor at the Ministry of Justice	Counselor Rashid Abdullah Al Balushi	Ninth
44 mins	His office at the Court of Cassation in Dubai	April 1, 2025	30	Judge of the Court of Cassation in Dubai	Judge Nasser Saeed Al Muhairi	Tenth

Second Topic: Study Tool:

In this study, the interview tool was relied on as the main means of collecting the qualitative data necessary to analyze the right of movement and residence in the United Arab Emirates from the perspective of human rights law, and the advantages of the interview tool are that it provides the researcher with an opportunity to understand the studied phenomena in their natural context, where through direct interaction, the answers can be clarified, non-verbal expressions can be observed, and additional dimensions that were not considered when preparing the questions, and the interview allows to reach accurate details about Participants' work experience and professional experience, especially when the sample is made up of legal experts with extensive experience, such as academics, judges, and lawyers, as in this study

The interview questions consisted of a set of open-ended questions that are directly related to the objectives of the study, and the following table shows the relationship between the interview questions and the objectives of the study.

Table 5.2 The Relationship of Goals to the Interview Questions

Interview Questions	Objective
How do you assess the UAE's domestic legal framework regarding the right of movement and residence in relation to international human rights standards? In your opinion, do the UAE constitution and national laws provide adequate protection for freedom of movement and residence? And why? To what extent are domestic legislation regulating freedom of movement compatible with international conventions ratified by the UAE? Are there any legal gaps or aspects that need to be developed in the UAE system to ensure better freedom of movement and residence? How do you see the role of international treaties (such as the International Covenant on Civil and Political Rights) in influencing UAE legislation on freedom of movement?	Analysis of the international and local legal framework and provisions governing freedom of movement and residence in the UAE
How do you assess the UAE's exercise of its authority to restrict or regulate freedom of movement and residence in normal circumstances? In your opinion, do the criteria for imposing restrictions on freedom of movement and residence differ in exceptional circumstances such as health or security emergencies? To what extent do you think the measures taken during crises (such as the COVID-19 pandemic) have been commensurate with the requirements to protect public health while respecting freedom of movement? In your opinion, what legal safeguards are needed to prevent arbitrariness in the exercise of power to impose restrictions on freedom of movement? Do you think that additional reform or regulation is needed to regulate the exercise of the State's discretion over freedom of movement?	Assess the extent of the UAE's authority to regulate freedom of movement and residence under normal and exceptional circumstances
In your opinion, how effective is the current judicial oversight of decisions regarding restrictions on freedom of movement and residence in the UAE? How do you see the role of the administrative judiciary in protecting individuals from arbitrary restrictive decisions? Are there sufficient safeguards for litigants to challenge travel or residence bans? In emergency situations, do you see a change in the level of judicial oversight of decisions restricting freedom of movement?	Assessing judicial oversight in the context of restrictions on freedom of movement and residence in the UAE

What are the challenges or obstacles that may limit the effectiveness of judicial oversight in protecting freedom of movement and residence in practice?

Third Topic: Study Analysis and Discussion

First: Analysis of the interview data

Schedule Shows the similarities and differences in participants' opinions on each of the interview questions

Highlights of Contrast	Difference or	Key trends agreed upon among participants	Interview Question	Number
Some participants pointed to the lack of legal determination, the absence of an explicit constitutional text, and quick and effective appeal mechanisms.		Most participants agreed that there were general legal guarantees for freedom of movement, with no uniform law regulating this right and the administration's broad discretion.	Assessing the domestic legal framework for freedom of movement and residence against international standards	1
Some participants pointed out that the lack of detailed texts limits the possibility of direct reliance of the constitution before the judiciary.		The majority of respondents were of the view that the UAE constitution does not contain an explicit and independent provision for freedom of movement, and that the current legal regulation is heavily dependent on regulatory laws.	Adequate constitutional and legal protection for freedom of movement and residence	2
Some participants pointed out the absence of explicit references to international conventions and the lack of clear priority given to them in judicial application.		Participants agreed that there is a partial intersection between UAE legislation and international human rights standards.	Domestic legislation is in line with international conventions	3
Some participants pointed to the lack of official documentation and the absence of an independent body to adjudicate grievances related to restriction decisions.		Participants were unanimous in the ambiguity of some legal concepts related to freedom of movement and the absence of a uniform law regulating them.	Existence of legal gaps or aspects that need to be developed	4
Some participants noted the lack of mandatory mechanisms for incorporating international standards in the preparation of national legislation.		Participants were of the view that international conventions were used as interpretative reference rather than as a direct legislative effect.	Impact of International Treaties on National Legislation	5
Some participants pointed to the lack of effective oversight and prompt implementation of some decisions without enabling the aggrieved party to appeal quickly.		Participants agreed on the broad powers of the executive authorities to impose restrictions related to travel or residence bans.	Exercise of the State's powers to restrict movement in normal circumstances	6
Some participants noted that some restrictions persisted despite the fact that their causes had disappeared and there was no periodic review.		The majority of respondents were of the view that the UAE legislation does not include a precise definition of exceptional circumstances or clear criteria to distinguish them from ordinary circumstances.	Different Criteria for Limitation in Exceptional Cases	7
Some participants noted that some of the restrictions were broad and severe, with no humanitarian exceptions and immediate grievance mechanisms.		Participants agreed that the measures taken during the pandemic were aimed at protecting public health and community security.	Proportionality of measures during crises such as 19-COVID	8

Some participants pointed to the lack of obligation of the administration to cause and weak internal oversight of decisions restricting freedom of movement.	Participants stressed the importance of rationalizing administrative decisions and enhancing procedural transparency.	Legal safeguards to prevent arbitrariness of restrictions	9
Some participants pointed to weak parliamentary oversight and the absence of precise human rights standards in some of the current texts.	Participants agreed that a clearer legislative framework should be issued defining the controls for the exercise of the discretion of the administration.	The need for legislative reform on the discretionary power of the State	10
Some participants noted that judicial oversight remains limited in practice due to the length of the procedures and the weakness of the summary suspension mechanisms.	Participants were of the view that administrative justice provides principled legal protection for freedom of movement.	Effectiveness of current judicial oversight	11
Some participants noted that the judiciary sometimes focuses more on formal control than objective control of proportionality and necessity.	Participants agreed that the administrative judiciary plays an important role in overseeing the legitimacy of administrative decisions.	The Role of the Administrative Judiciary in Protecting Against Arbitrary Restrictive Decisions	12
Some participants noted that these safeguards were not effective in practice due to access to files and insufficient prior notice.	Participants believed that judicial safeguards are theoretically available in UAE legislation.	Adequacy of judicial guarantees for appeal	13
Some participants noted a decline in the level of proportionality control and the persistence of some restrictions without adequate periodic review.	Participants agreed that the judiciary has tended to support administrative measures during crises in order to preserve public order and public health.	Changing judicial oversight during an emergency	14
Some participants pointed to the administration's monopoly on information and documents, and the weakness of human rights training specialized in some aspects related to freedom of movement.	Participants agreed that there were procedural challenges affecting the effectiveness of judicial oversight.	Obstacles to judicial control over freedom of movement	15

Second: The results of the study.

First: Analysis of the international and local legal framework and provisions governing freedom of movement and residence in the UAE

- I. The study showed that the UAE Federal Constitution of 1971 explicitly guaranteed freedom of movement and residence through Article (29), which stipulates that: "Freedom of movement and residence is guaranteed to citizens within the limits of the law", but this constitutional regulation came in a concise and general wording compared to the comparative constitutions that dedicated detailed texts dealing with the scope of the right, its guarantees, the restrictions contained therein, and the mechanisms of its judicial protection, which made the constitutional protection of freedom of movement in the UAE of a general nature rather than a direct detailed protection.

- II. The study revealed that there is a multiplicity and complexity in the legislation regulating freedom of movement and residence in the UAE, where the legal provisions were distributed between the Constitution, the Code of Criminal Procedure, the Code of Civil Procedure, the Law on the Entry and Residence of Foreigners, and legislation related to public security, without the existence of a unified federal law that comprehensively regulates freedom of movement and residence, which led to overlapping competencies and the expansion of the discretionary authority of the administration in some forms of restriction.
- III. The results of interviews and doctrinal analysis showed that some legal texts related to travel bans or administrative deportation still grant the administration broad discretionary powers, without a clear legislative obligation to specify the duration of the restriction, explain the reasons in detail, or automatically refer the decision to urgent judicial review, which may affect the level of procedural safeguards related to the protection of the right to movement and residence.
- IV. The study showed that international human rights conventions, in particular the International Covenant on Civil and Political Rights of 1966, have contributed to the development of an international framework for the protection of freedom of movement and residence, but the integration of these international standards into UAE national legislation still needs more legislative and judicial activation, especially with regard to the principles of necessity, proportionality, and judicial justification for restrictions on this right.

Second: Assessing the Scope of the State's Authority to Regulate Freedom of Movement and Residence in Ordinary and Exceptional Circumstances

- I. The study showed that the UAE legislature has granted the competent administrative authorities legal powers to regulate freedom of movement and residence in normal circumstances, whether through travel bans, regulating the residency of foreigners, or imposing some restrictions related to the public interest and public security, but these powers remain – in principle – restricted by the principle of legality and subject to judicial control.
- II. The study revealed that there is no precise legislative definition that clearly distinguishes between ordinary and exceptional circumstances in which restrictions on freedom of movement and residence may be extended, which may lead to the continuation or expansion of some exceptional measures without specific legal criteria that control their time and substantive limits.
- III. The results of the study related to the COVID-19 pandemic showed that the UAE has taken a set of preventive and regulatory measures aimed at protecting public health, including the imposition of restrictions on movement and movement, quarantine measures, and temporary restriction of some activities, which were based on considerations to protect the public health system, but on the other hand, the study revealed the absence of a special federal legislative framework that regulates in detail the restrictions associated with public emergencies, their periodic review mechanisms, and the limits of judicial oversight over them.
- IV. The study concluded that restrictions on freedom of movement during exceptional circumstances should be more clearly subject to the principles of necessity, proportionality and temporality, with the need for effective judicial review to ensure that restrictions do not continue after their causes have been removed, in order to achieve a balance between security and public health requirements on the one hand, and the protection of fundamental rights and freedoms on the other.

Third: Evaluation of judicial oversight of restrictive decisions on freedom of movement and residence

- I. The study showed that the UAE administrative judiciary exercises judicial control over a number of decisions restricting freedom of movement, especially decisions on travel bans, refusal to grant or renew passports, and administrative deportation decisions, by monitoring the elements of the administrative decision related to competence, form, cause, purpose and place.
- II. The study revealed that the scope of judicial oversight varies according to the nature of the decision and the body that issued it, as judicial oversight expands in some ordinary administrative decisions, while it narrows in decisions related to security considerations or acts of sovereignty, which leads to the limitation of objective control over some measures restricting freedom of movement.

III. The study concluded that the UAE legislation does not oblige the administration in all cases to cause travel bans or deportations in detail or to enable the aggrieved party to fully review the administrative decision file, which may affect the effectiveness of the right of defense and judicial appeal and limit the ability of the judiciary to exercise full objective control over the legality of the decision.

IV. The study showed that there is a legislative shortcoming with regard to judicial oversight of administrative detention decisions, as there is no integrated legislative regulation that accurately defines cases of administrative detention, its duration, guarantees of appeal thereof, and mechanisms for compensation for its misuse, despite its direct impact on freedom of movement and personal freedom.

Fourth: Strengths of the UAE Laws that Protect the Right to Movement and Residence

I. The UAE constitution guarantees freedom of movement and residence through Article 29, which is a constitutional basis for protecting and regulating this right within the framework of legal legitimacy.

II. The UAE legislature was keen to regulate cases of restriction of freedom of movement through specific laws and legal procedures, and to link some forms of restriction to judicial oversight, especially in matters of travel bans and penal procedures.

III. UAE legislation includes provisions criminalizing unlawful assault on personal liberty and freedom of movement, as stipulated in the Federal Crimes and Penal Code and the Code of Criminal Procedure, in order to enhance the legal protection of individuals.

IV. The study showed that there is a legislative and judicial development in some areas related to the regulation of the residence of foreigners and the appeal of administrative decisions restricting movement, reflecting a trend towards strengthening procedural safeguards in this field.

V. The study revealed the UAE's keenness to take into account humanitarian considerations in some exceptional cases, as was evident during the COVID-19 pandemic and some initiatives related to extending residency or regulating the conditions of those affected by crises and disasters, in line with considerations related to human rights and the requirements of human and social stability.

Recommendations:

I. Amend Article 29 of the UAE Federal Constitution of 1971 to make it more detailed in regulating freedom of movement and residence, by explicitly stipulating judicial and procedural guarantees related to this right, and linking any restriction thereof to a reasoned judicial decision for a specific period, in line with Article 12 of the International Covenant on Civil and Political Rights.

II. Promulgating a unified federal law on freedom of movement and residence that clearly regulates cases of travel bans, administrative deportations, administrative detention, and residency restrictions, with the procedure for grievances and appeals and the procedural safeguards to be required in each case.

III. Establish a precise legislative definition of ordinary and exceptional circumstances in which restrictions on freedom of movement and residence may be imposed, specifying the scope of each case, the competent authority to declare it, its legal duration and its effects, in order to prevent the unjustified expansion of the use of exceptional powers.

IV. Enact federal legislation on emergencies and public crises regulating restrictions on freedom of movement during pandemics, disasters or exceptional security conditions, providing that these measures are subject to the principles of necessity, proportionality, temporary timing, and periodic judicial review.

V. Reorganizing administrative detention legislatively through the development of explicit legal texts specifying the cases of recourse to it, its maximum duration, the guarantees of the arrested person,

and the right to appeal and compensation, while subjecting administrative detention decisions to the direct and effective supervision of the administrative judiciary.

- VI. Obliging the administrative authorities to give reasons for decisions restricting freedom of movement and residence in a written and clear manner, stating the factual and legal reasons on which the decision was based, and enabling the aggrieved party to obtain a copy of the decision and appeal against it within a reasonable period of time.
- VII. Strengthening objective judicial oversight of administrative decisions restricting freedom of movement and not sufficing with formal control, through the adoption of the "necessity and proportionality" test by the administrative judiciary when examining the legitimacy of decisions related to public security or the public interest.
- VIII. Obliging the administration to submit an integrated administrative file upon judicial appeal that includes the documents and reasons on which the administrative decision was based, in order to enable the court to exercise effective control over the elements of the administrative decision, especially the reason and purpose corners.
- IX. Activating the right to compensation for illegal decisions restricting freedom of movement and residence by including explicit provisions in administrative legislation that hold the administration responsible for decisions that are proven to be arbitrary, contrary to the law, or abuse of power.
- X. Promote the harmonization of national legislation with international human rights conventions through the issuance of implementing legislation that activates the international obligations ratified by the UAE, and enable individuals to rely on these conventions before the national judiciary more clearly.
- XI. Adopt the principle of gradual imposition of restrictions on freedom of movement during crises and emergencies so that measures are applied in a phased and reviewable manner, with clear humanitarian exceptions for health, family or educational situations.

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