
Revisiting a Court of Cassation judgment: did the legislator unintentionally open the floodgates for a “second instance” before the highest judicial authority?

On 29 August 2021, the UAE legislator issued Decree No. 15 of 2021 and added Article 187 bis,¹ allowing the General Panel of the Court of Cassation to review its judgments (on procedure and merit) should one of the three exceptional hypotheses apply. In other words, the General Panel of the Court of Cassation can now set aside the judgments issued by the Court of Cassation itself, which appears to go against a well-established legal and judicial principle, by which the rulings from the Court of Cassation are considered final, binding, and superior to the considerations of public order.

Other jurisdictions have somehow likewise circumvented said principle but in a more restrictive manner. For instance, the Egyptian Court of Cassation conceived an exceptional route, *extra legem*, to review its judgments. The purpose being the pursuit of justice and fairness, only in cases of procedural error by the Court of Cassation itself - mistakes related to merits will not open the door for a revision. By way of illustration, said Court has reversed judgments which incorrectly dismissed appeals because they appeared to have been filed after the expiry of the applicable time limit, or because the Court fees had not been fully settled, when they had in fact been paid.

The coming months will be key to see whether this legislative action will result in the increase of cases where the Court of Cassation overturns its own judgments, as three legal novel ways to do so might result in a deluge.

Should you require further information on the new provision and ensuing judgments, or legal advice in relation thereto, please do not hesitate to contact us. We would gladly assist you.

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¹ “**Article (187) bis:**

1. Without prejudice to the first paragraph of Article (183) and as an exception to the provision of Article (187) of this Code, the court may retract a decision issued by it in chambers or its final judgment on its own initiative or at the request of the person against whom the decision or judgment was issued, in any of the following cases:

(a) If the decision or judgment is tainted by a procedural error made by the court or its auxiliary bodies and has affected the conclusion reached in its decision or judgment;

(b) If the decision or judgment is based on a repealed law, and application of the correct law would change the opinion reached in the case; or

(c) If the decision or judgment was issued in violation of any of the judicial principles decided by the panel or all circuits of the court, as the case may be, without being presented to it, or if it was issued in violation of the principles established by the court or by the Commission on Unification of Principles between the Federal and Local Judicial Authorities.

2. The application for retraction shall be made by the party against whom the decision or judgment is issued to the President of the Federal Supreme Court or the President of the Court of Cassation, as the case may be, signed by a lawyer acceptable to plead before it and accompanied by a security deposit of twenty thousand dirhams. If the retraction is on the court's initiative, it shall be referred by its president, accompanied by a report from the technical office to the panel referred to in item (3) of this Article.

3. The application for retraction or statement of referral, stipulated in item (2) of this Article, shall be considered before a panel formed of five of the most senior judges of the court. This panel – held in chambers – shall issue a reasoned decision on the application for retraction by a majority of four judges. The security deposit shall be confiscated in the event that the application is rejected, and if the application is accepted, it shall be referred to another circuit to consider the appeal again and decide thereon, with the amount of the security deposit being refunded to the applicant.

4. In all circumstances, the referral or submission of an application for retraction shall be made one time only, and no referral or submission may be made after the lapse of one year from the date of issuance of the decision issued in chambers or the final judgment.”

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