

# الحدود الدستورية للعلاقة بين السلطتين التنفيذية والتشريعية في الدستور الكويتي

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## Summary

Separation between the authorities does not mean the total independence of each authority from the other; rather, it means that power will not be concentrated in the hands of one only. This is because complete separation between authorities cannot be envisaged in practical terms. Also, there are in reality channels of communication between them to allow their cooperation, whether this is between the two legislative and executive powers or their relations with the judicial powers. However, the question to be asked here is: How are those powers distributed in the Kuwaiti Constitution and what is the mechanism of the relationship between those powers? In order to answer this question, the following matters will be examined. This study deals with the relationship between the executive and the legislative authorities and examines the means used by the executive authority towards the national assembly, and then studies the means used by the national assembly towards the executive authority.

## ملخص البحث

الفصل بين السلطات لا يعني الاستقلال التام لكل سلطة عن الأخرى, بل يعني أن السلطات لن تتركز في يد سلطة واحدة فقط, لأن الفصل التام بين السلطات لا يمكن تصوره من الناحية العملية. أيضا هناك في الواقع قنوات اتصال بينها لإتاحة التعاون فيما بينها سواء كان ذلك بين السلطتين التشريعية والتنفيذية أو علاقتهم مع السلطات القضائية. السؤال الذي يجب طرحه في هذا البحث هو: كيف تتوزع تلك السلطات في

الدستور الكويتي، وما هي آلية العلاقة بين تلك السلطات؟ للإجابة على هذا السؤال ، سيتم دراسة العلاقة بين السلطين التنفيذية والتشريعية. وبحث الوسائل التي تستخدمها السلطة التنفيذية تجاه السلطة التشريعية ودراسة الوسائل التي تستخدمها السلطة التشريعية تجاه السلطة التنفيذية.

## **Constitutional Boundaries of the Relationship between the Executive and the Legislative Authorities in the Kuwaiti Constitution**

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### **Introduction**

The separation of powers means that the authorities should not be concentrated in the hands of only one power within the State. Thus, many different independent authorities, separate from each other, exercise these separate powers. However, separation between the authorities does not mean the total independence of each authority from the other; rather, it means that power will not be concentrated in the hands of one only. This is because complete separation between authorities cannot be envisaged in practical terms. This is shown by the American constitutional system which is based upon complete separation between existing powers; however, “they may legitimately check or act upon each other and indeed are separated precisely so that they may exercise such mutual checks”.<sup>1</sup> Also, there are in reality

channels of communication between them to allow their cooperation, whether this is between the two legislative and executive powers or their relations with the judicial powers.<sup>2</sup> However, the question to be asked here is: How are those powers distributed in the Kuwaiti Constitution and what is the mechanism of the relationship between those powers? In order to answer this question, the following matters will be examined. However, this study has divided to introduction and three sections; the first section deals with the relationship between the executive and the legislative authorities. The second section examines the means used by the executive authority towards the national assembly. The third section studies means used by the national assembly towards the executive authority; and this research ended with a conclusion.

## **Section One**

### **The Relationship between the Executive and the Legislative Authorities**

The Kuwaiti Constitution did not take up the principle of absolute separation between authorities as in a presidential system, but followed the parliamentary system by taking up the basis of flexible separation between authorities with mutual cooperation. However, even in the states that have taken up a presidential system, the absolute separation between authorities is a difficult affair in practice.

Therefore, in the presidential system (the one considered by the jurists to be based upon the strong separation between authorities) separation of powers has developed and given every authority the means to influence other authorities and facilitate their censorship.<sup>3</sup>

However, the Kuwaiti Constitution stated, “The system of government is based on the principle of separation of powers functioning in cooperation with each other in accordance with the provisions of the constitution.”<sup>4</sup> This text prescribes that the Kuwaiti authorities are ruled by three main principles and these are the same as that base of separation between the authorities in the parliamentary systems. These principles are:

- 1) There should be a distinction between the State’s three functions – the legislative, executive and judicial – and each of these functions should be allocated to a public authority;
- 2) These public authorities are not completely specific in their function, and thus there are cooperative fields in which more than one authority is working;
- 3) These authorities are not completely separate from each other, but there is exchangeable mutual bilateral cooperation between them through which each authority influences the work of others and at the same time can check the work of each other in order to achieve balance between them. This sort of mutual scrutiny and cooperation ensures that no authority exceeds its limitations.

However, the doctrine of separation of powers has different aspects which, if applied to Kuwaiti constitution, might cause conflict.

As indicated in article 50 of the Constitution, which specified that these two authorities should be separate but should work cooperatively in accordance with constitutional provisions. Some aspects of this cooperation are illustrated below.

***1. Creation of channels for information exchange between the two authorities:***

This is exemplified by the presentation of a ministerial programme to the Assembly, in which information is given about general internal and external policy.<sup>5</sup> Some examples such as the Amiri speech presented by the Prime Minister on behalf of the Amir, exhibiting what was done by the previous government during the past year and the National Assembly's response,<sup>6</sup> and the financial charge introduced by the government to the Assembly during the ordinary meeting of the Assembly.<sup>7</sup>

***2. Creating combined work activities between these two authorities:***

There are many tasks that could be done in a cooperative fashion by the two authorities together, in order to achieve aims that require the combined effort of both. Examples of this are the selecting of the Amir and the paying of allegiance to him, endorsing laws, and

drawing up the protocols, the financial budget and decreed-laws or (decrees of necessity) (Article 71 of the Constitution), and delegation bills (Article 50 of the Constitution).

### ***3. Means granted to each authority to check on the other:***

Each authority can be granted some means through which it can influence the other in a variety of ways; in so doing each may be checking the other. These ways will be discussed in the following sections.

## **Section Two**

### **The means used by the executive authority towards the National Assembly: <sup>8</sup>**

These means are as follows:

a. **The right of the executive authority to appoint some members of the Assembly:** Here, the Kuwaiti Constitution considered those ministers working as non-elected members of the National Assembly to be members with ex-officio function.<sup>9</sup> The Constitution also ascertains that the Amir is the one who appoints and also dismisses the ministers.<sup>10</sup>

It is clear from this that the Amir himself directly appoints some of the National Assembly; they are the ex-officio members, and enjoy

membership of the National Assembly as well as of the Executive Authority. Here, ministers with combined functions may have the notion that their collective responsibility as members of the executive power overrides National Assembly membership, as well as the fact that ministers have to comply with the rule that they have to vote collectively in parliament. Therefore, the executive power, with the help of those members with ex-officio functions will, in fact, be able to participate in the resolutions endorsed by the Assembly, especially when sittings of the Assembly are considered proper only if the head of the government and some of the ministers are attended and they should be given the floor whenever they ask for it. They (the ministers) can call for assistance upon any senior officials or depute them to speak on their behalf.<sup>11</sup>

**b. The right of the Executive Authority in participating in the Assembly function:**

The Executive Authority has the right to participate in the functioning of the Assembly, which could limit the freedom of the Assembly's work and conduct. The executive authority has the right to impose any subject for discussion in the Assembly, and the Constitution also gives this authority the right to initiate laws.<sup>12</sup> However, the internal code of the National Assembly states that government-proposed bills would remain even after the expiry of the

legislative term, and would be outlined in the agenda of the new Assembly.

Moreover, the Executive Power has the right to halt Assembly resolutions according to articles 65 and 66 of the Constitution, which give the executive power the right to review any propose law endorsed by the Assembly. It means that the Constitution granted the government the power to halt Assembly resolutions and defer their implementation. Finally, the Executive Authority has the right to revoke any resolution taken by the Assembly.

Article 114 of the Constitution empowers the Amir (who is the head of the Executive Authority) the right of sanction on the technical meaning on the resolution of the constitutional amendment. However, the legal nature of this right consists of absolute objection, which could enable the executive authority to revoke the proposal of an amendment that has been endorsed by the assembly. Therefore, it would be considered annulled by not being sanctioned by the head of the executive power. It is worth noting that this right differs from the right of provisional objection in the aspect of ordinary laws, where the assembly could endorse it again with a special majority vote.

c. **The means through which the government interferes in the affairs of the National Assembly:** One of its means is it has the right to call the National Assembly for a meeting or to prorogue it. Here, the National Assembly has its normal sittings during legislative terms, though it can be asked to reconvene in extraordinary times.



Thus, the Executive Authority is the only power to call for such sittings or to prorogue such meetings. On the other hand, the Constitution has limited the power of the executive to postpone the Assembly sitting for an undefined period and has specified that it should be able to convene within a reasonable period every year. However, it is clear from examining aspects of comparative law, that Constitutions which consider parliaments to have perpetual sittings as well as independence in deciding the adjournment of their meetings, and the period of their recess without interference of the executive authority, in some respects represent the right way in which to comply with the sovereignty of the people, as is the case in the Swiss and American Constitutions.

However, when a Constitution gives an Executive Authority the right to regulate the sittings of the Assembly, it is, in fact, placing such institutions and legislative bodies under the power of the executive.<sup>13</sup> The Kuwaiti Constitution stipulated that the Executive Authority had the right to suspend Assembly sittings, as Article 106 stated:

The Amir may, by a decree, adjourn the meeting of the National Assembly for a period not exceeding one month. Adjournment may be repeated during the same session with the consent of the Assembly and then once only. A period of adjournment shall not be counted in computing the duration of the session.

From this article it is clear that the right of adjournment is a function practiced by the Amir, who exercises this right through his ministers; thus, adjournment would be issued by an Amiri decree not by an Amiri order.

Moreover, concerning the right of adjournment for one month, the Executive Authority could initiate this at any time for its own convenience, though it could not suspend or dismiss its sittings during a period under Martial Law.<sup>14</sup> It is also possible to repeat this adjournment more than once and for the same period during the same legislative term. This would happen after the Assembly had been called upon to agree to a repetition of the suspension. Additionally, this period of adjournment would not be considered in computing the duration of the session; the period of annual session for the assembly ought not to be less than eight months.<sup>15</sup> Thus, the Executive Authority used this suspension period as one of the means by which it influenced the workings of the National Assembly.

**d. The wide powers of the Executive power in making laws:**

The Amir (executive power) and any member of the Assembly have the right to propose a bill on any subject, except the Budget law, which has to be proposed by the government to the Assembly. But the proposal of the government is called a draft law while a proposal of

the member of the Assembly is called a proposal for a law. The draft law is presented directly to the Assembly to be viewed, while proposal for a law has to be referred by the head of the Assembly to the legal and legislative committee to express its opinion and put it its legal format in the case of its approval.<sup>16</sup> If the government bill was rejected, it has the right to reintroduce it again at the same assembly sitting with amendments to points raised earlier. But if the assembly rejected a proposal introduced by an assembly member, it cannot be reintroduced at the same assembly sitting. The constitution, also has given the absolute right to the Amir (executive power) in ratification of the constitutional amendments according to article 174.

**e. Dissolving the Assembly:**

Montesquieu thought that an executive power could dismiss the legislative power.<sup>17</sup> In Kuwait, dissolution has been the executive authority's strongest tool for confronting the legislative power. The dissolution of an Assembly means the dismissal or resignation of all parliament members in order to enable the voters to be the arbiters in any conflict occurring between the members of parliament and the Executive Authority. Some consider that this dissolution abrogates the principle of a nation's sovereignty,<sup>18</sup> while others see that dissolution is the way to give the people a chance to express their opinions, as it is the reference in any political conflict that happens between the authorities.<sup>19</sup>

Thus, in a classical parliamentary system, the right of the government to dissolve the elected Assembly is equalised by the right of parliament to withdraw confidence from it, and thus achieve balance between the two authorities of the regime. In this case arbitration would take place through a public referendum. Such a relationship between the government and parliament has, however, become symbolic in contemporary times, due to the fact that the roles played by political parties have changed the nature of the relationship between the government and parliament. An example of this is the British parliamentary system.

As it will be discussed in the next chapter concerning the dissolution of the Assembly, the Kuwaiti Constitution stated this right in the event of cooperation between the National Assembly and the Prime Minister becoming impossible.<sup>20</sup> It can also be seen from Article 107 that the Executive Authority has the right to dissolve parliament; at the same time, however, the Constitution indicates several rules for using this right in order to prevent the government from abusing this right of parliament dissolution.

## **Section Three**

### **Means used by the National Assembly towards the Executive**

#### **Authority:**

The constitutional legislature formulated the means to be used by the National Assembly to oversee the works of the executive authority. The levels at which the Assembly expresses its wishes differ, until they reach the withdrawing of confidence from the minister, forcing his resignation, or informing the Prime Minister of non-cooperation with him, thus leading to the resignation of the entire cabinet.<sup>21</sup> These means can be categorized as follows:

#### **First: Means used by the National Assembly in checking the Executive Authority's activities:**

These means, which are less dangerous than those of political responsibilities, include:

##### **1. Desires and Views:**

Article 113 of the Constitution stated that the National Assembly might express to the government its wishes regarding public matters. If the government could not comply with these wishes, it should state the reasons to the Assembly, and the Assembly might

comment once on the government's statement. The Internal Code specified some of the provisions in this subject.<sup>22</sup>

However, such means, even though the weakest one from the point of view of legality, remain important from a political view, especially if such deliberations about wishes and opinions are public, this, in turn, might have some influence in putting pressure on the government in this subject:

## **2. The Right of Questioning:**

Article 99 of the Constitution states that every member of the National Assembly has the right to put questions to the Prime Minister and to Ministers with a view to clarifying matters falling within their competence, and the Internal Bill detailed such provisions in this matter.<sup>23</sup> Questions directed by members towards the Cabinet would achieve parliamentary scrutiny without affecting political status. For example, the British Parliament specifies three-quarters of an hour at every sitting for questions, and in Kuwait the Internal Bill specifies half an hour of every sitting for questions and answers.<sup>24</sup>

There are bases governing the right of questioning; for example, there could be a deliberation between any member of the Assembly and the minister; no more than one member is able to direct a particular question; and a question is directed towards one minister only. In this way, a dialogue is limited to the enquirer and the person

(minister) to whom the question is directed,<sup>25</sup> and the enquirer is the only one who can, only once, comment on the answer. Thus, the question should not provoke an argument between the parties and should not give a rise to a general argument in which others might interfere.<sup>26</sup> The question should not lead to any assembly resolution but could be terminated either by a reply or by comment on the reply. The internal bill for the Assembly also places some limitations upon the right of questioning on behalf of any organisation, and some of these limitations are that questions should be written clearly and briefly and signed by the persons asking them.<sup>27</sup> Here, the minister should provide answers during the time specified during sittings for doing so.<sup>28</sup> However, a minister has the right to postpone an answer for two weeks at the most and the request ought to be answered during this time; if such postponement extends beyond this period, the Assembly should endorse it.<sup>29</sup> The enquirer is not allowed to change his question into interpellation at the sitting given for review.<sup>30</sup> This question raised by a member will not be looked into if the member withdraws it without it being adopted by another member.<sup>31</sup> However, if the legislative session is terminated, the question raised will be dropped; the same thing would happen if the minister has resigned from his job or the enquirer has lost his membership of the assembly for any reason, and without the question being taken up by other members.<sup>32</sup> Finally, the question would not be dropped if the enquirer was absent from the sitting given for review,<sup>33</sup> nor would it be

dropped by the termination of the sitting sessions; the answer could in fact be sent in writing to the Assembly president to pass to the enquirer.<sup>34</sup>

### **3. Discussion of Public Issues:**

Article 112 of the Constitution states that, if five members of the Assembly signed a request upon any subject of general interest, it would be put to the national assembly for discussion with a view to securing clarification of the government's policy and to exchanging views thereon. All other members of the assembly should also have the right to participate in the discussion. The Internal Bill detailed such topics.<sup>35</sup> Such a discussion should not be based upon accusation and should not end up with a resolution affecting ministerial responsibilities; but should be finished either by closing the door on the discussion without any resolution or by taking a desired resolution without condemning the government.<sup>36</sup> However, in order to safeguard the executive authority, the Constitution defined some limitations on the subject of general discussions; thus, the request should only be allowed if presented by five members and ought also to be signed by them.<sup>37</sup> Once this request is presented to the president of the Assembly, he would in turn inform the Prime Minister or the minister concerned, and the request would be listed for review on the agenda of the next sitting. Here, the Prime Minister or the concerned minister could ask for a two-week postponement, a period that could only be



extended by an Assembly resolution.<sup>38</sup> The Assembly could also refer this request to one of its Committees to look into the matter and draw a conclusion.<sup>39</sup>

The request would be dropped if the legislative term has finished, though it would not drop if the sitting session has not finished. The request would also be dropped in the absence of the members who introduced it for review during the given sitting, or if they dropped it without it being taken up by other members, or if their membership have finished for any reason, or if the minister to whom the question was directed has left his position.<sup>40</sup>

#### **4. Inquiry Committees:**

These are required in case where there was a breach in one of the government apparatus or because of the occurrence of a political or financial scandal etc. Here, the Assembly might not be able to rely on what it regarded as doubtful information or data that the government has introduced; instead the Assembly has the right to collect this information through a committee formed by its members to investigate on its behalf. This is called the ‘inquiry committee’.

However, article 114 of the Constitution stated that the National Assembly should at all times have the right to set up committees of inquiry or to delegate one or more of its members to investigate any matter within its competence. Ministers and all government officials

should produce testimonials, documents and statements requested from them.

The Internal Code of the Assembly stipulated some restrictions upon this right; for example, it is conditional on the request being written and signed by at least five members.<sup>41</sup> The Internal Code allows the Prime Minister or the said minister to request deferment of the review for two weeks at most; this deferment can be postponed beyond this period, but only through the consent of the Assembly which issues a decision for this purpose.<sup>42</sup> This request is dropped if those requested it did not attend the agreed sitting, or if it had been dropped by them, or if they had had their membership terminated for any reason, without the request being adopted by another five members, or if the individual to whom the request was directed had left his position.<sup>43</sup>

Thus, it can be seen that this means through which the Assembly forms inquiries committees from its members, also enables the Assembly to scrutinise the workings of the executive authority.

## **5. Interpellation:**

This notion carries the meaning of scrutiny and directed accusation towards one of the ministers or the Prime Minister, which allows true participation of all the members. As it has been mentioned very briefly in chapter four (in section legal position of Prime Minister

and Ministers), this questioning session can affect the status of ministerial responsibility before the Assembly in accordance with provisions 100, 101, 102 of the Constitution. Such questioning will undoubtedly give a certain censorship for the Assembly towards the executive authority. Article 100 stated that every member of the National Assembly might address to the Prime Minister and to ministers interpellation with regard to matters falling within their competence. The debate on such an interpellation should not take place until at least eight days have elapsed after its presentation, except in the case of urgency and with the consent of the minister concerned. Subject to the provisions of Article 101 and 102 of the Constitution, an interpellation might lead to the question of no confidence being put to the Assembly.

Moreover, Articles 133 to 142 of the Internal Code of the Assembly completed what Article 100 of the Constitution stated. These articles in fact defined the right of interpellation; e.g., that it is possible to introduce any interpellation by one member or more, but not exceeding three members. The interpellation should not be directed to two or more ministers at the same time, though it can be introduced to each minister separately, or to the Prime Minister. This interpellation can be introduced in writing, briefly outlining the issues, and should not contain any unsuitable material touching on the integrity of people or of establishments or anything that would harm state interests.<sup>44</sup> The questioning pertaining to this interpellation

cannot be started before at least eight days have elapsed from the date of introduction, unless there is an urgent matter or the person to whom the interpellation is directed accepts this urgency. This person has the right to defer the investigation for two weeks at most. Beyond this period, an Assembly resolution will be needed.<sup>45</sup>

Discussion of this matter will not be terminated before at least three members support the investigation and three members against it have discussed the issue.<sup>46</sup> This investigation will be dropped if its advocates withdraw it, or if they do not attend the agreed sitting for reviewing it, and without its adoption by other members, or if the one being questioned has left his position, or if the membership of its advocate has been terminated for any reason, or the legislative term has expired (though it would not be dropped at the ending of the sitting session).<sup>47</sup>

Finally, according to Articles 101 and 102 of the Constitution, the interpellation could lead to the issue that the Assembly could put the question of no confidence in the minister to the vote by the members of the Assembly,<sup>48</sup> with the result that either his confidence would be maintained or withdrawn; in the second case the said minister should resign.

However, all the above discussion has been theoretical, but if we ask, have all these constitutional provisions been applied in practice? The answer would be that the National Assembly did not use interpellation correctly (articles 100 and 101) in a compatible way with

its censorship for the government function. For example, from the establishment of the Assembly until the year 2002, the Assembly only exercised the right of interpellation twelve times and a vote of no-confidence against a minister had taken place five times only, in the years 1974 (twice), 1994, 2000, and 2002. However, all these five interpellations failed to achieve the majority vote to withdraw the confidence from the ministers.<sup>49</sup> There are various reasons behind this, such as the constraints imposed upon the National Assembly versus warranted powers of rights employed by the executive power, because the Constitution granted the Amir wide powers and could use these powers for example any time to dissolve the Assembly; the absence of political parties; Assembly members. lack of parliamentary experience, and the inability of the Assembly to use its means in censoring the executive function in a proper way, all of which will be discussed later in this chapter.

### **Second: Political responsibility of Ministers before the National Assembly:**

The political responsibility of ministers to the members of the National Assembly (Parliament) is the essence of the parliamentary system. This responsibility means that, when confidence in the minister or the ministry been withdrawn by parliament, they lose their position and power. It can be an individual responsibility borne by the minister alone and hence confidence is withdrawn from him, or the

responsibility is collective and hence confidence is withdrawn from the whole ministry. Thus, the power given to the Executive Authority in dissolving parliament and the power given to the legislative authority in withdrawing confidence from the ministry, both cases achieve the traditional balance of powers in the traditional parliamentary system. In the Kuwaiti Constitution, this system of accountability and responsibility of ministers to the parliament is fulfilled. However, it deviates from that traditional parliamentary basis in so far as it is the collective responsibility of all the ministers. Here, the constitutional legislator legislated in Article 102 that the National Assembly could decide that it cannot cooperate with the Prime Minister, rather than withdrawing confidence from the whole Cabinet.

### **1. Individual Responsibility of the Ministers:**

This responsibility is stated in Article 101 of the Constitution and is complemented by provisions stated in the Internal Code of the National Assembly,<sup>50</sup> which outline the process through which confidence in the Minister is withdrawn. Here, the Constitution has stipulated some restrictions upon the use of such rights, to safeguard the executive authority. It stipulates that withdrawal of confidence from any minister ought to be done after the minister has been questioned and the interpellation has in fact been completed.<sup>51</sup> And this withdrawal of confidence ought to be carried out after the said

minister has requested it, or according to a request or a demand signed by ten members.<sup>52</sup>

The Internal Code of the National Assembly also stipulates that those demanding this request ought to be present at that Assembly sitting, and that the President of the Assembly has in fact ascertained this presence before its presentation.<sup>53</sup> The Constitution also states that the Assembly will not issue its decision before seven days from its presentation.<sup>54</sup> This period will allow the minister and the Assembly members to study the proposal for confidence withdrawal. The Internal Code states that the two members who presented the proposal of non-confidence and two members opposing the proposal should be given the chance to talk, unless the Assembly sees the need for others to talk.<sup>55</sup> Such a process will in fact give the Assembly various views in which to formulate its decision in a proper way. The Internal Code also states that the decision should be voted on by calling names, rather than raising hands.<sup>56</sup> Finally, the Constitution stipulates that the number of votes would be calculated in relation to the majority of Assembly members, not of those present.<sup>57</sup>

However, it is strange that those absent and abstaining from voting would be considered as being on the side of the government' as if they indeed opposed the withdrawal of confidence. Also this Constitutional Article 101 and the provisions of the Internal Code showed the consequences of issuing such a withdrawal of confidence from the minister, since Article 101 considers the minister to be

dismissed from his post from the date of the withdrawal of such confidence, and that he ought to submit his resignation immediately. This would mean that any matter issued by this minister after the withdrawal of confidence would be considered ineffective in accordance with constitutional provisions unless, as stated in Article 103 of the Constitution, the minister continues his hasty issuing of matters pertaining to his post till another is assigned. Another minister is usually delegated to replace the outgoing one, or another minister deputises until a new minister is appointed.

The other consequence of such confidence withdrawal is that the minister will lose his assembly membership, since every minister is an ex-officio member of the Assembly. Ministers who were appointed by the Assembly will not lose such a privilege.

## **2. Non Co-operation with the Prime Minister's Office**

Article 102 of the Constitution outlined the process through which co-operation with the Prime Minister's Office would be withdrawn by the Assembly. This is similar to the process relating to the Assembly's withdrawal of confidence from any minister. However, the repercussion of such a decision by the Assembly will not be as bad as for a minister. Here, the Assembly will not ask the Prime Minister to leave his office within a specific time, as is the case



for a minister. However, the decision will be presented to the Amir, after which the Amir will have to take one of two choices:

He either takes the opinion of the Assembly and dismisses the Prime Minister from his post (and thereafter the entire ministerial cabinet), in which case a new cabinet will be appointed and the Prime Minister will continue to function in his office until a new Prime Minister is appointed in his place.<sup>58</sup> Or, the Amir may resolve to dissolve the Assembly and keep the Cabinet. In this case, if the new National Assembly does not want to cooperate with the Prime Minister, he will be dismissed immediately from the date of the resolution and a new ministerial cabinet will be formed with a new Prime Minister.

## **Conclusion**

1. The ideas of the separation of powers have influenced the Kuwaiti constitution but it has been in a random and unfinished way in which the balance of forces is unsound. It is obvious that there are three branches of government, with generally separate functions: the legislature (National Assembly), the executive (the Amir) and the judiciary.

2. The concept of the separation of powers outlined in Article 50 of the constitutions ceased to exist after the action of the dissolutions of 1976 and 1986, and in fact continued throughout the entire period during which the Assembly was suspended. Thus the system reverted to a mixed government system, in which the executive and legislative powers were vested in the hands of the same body, namely the Executive Power.

3. These public authorities are not completely specific in their function, and thus there are cooperative fields in which more than one authority is working.

4. These authorities are not completely separate from each other, but there is exchangeable mutual bilateral cooperation between them through which each authority influences the work of others and at the same time can check the work of each other in order to achieve a balance between them. The legislators tried to make some sort of mutual scrutiny and cooperation in order to ensure that no authority exceeds its limitations, but in practice the legislator did not achieve his task.

5. In Kuwait there is no strict separation of personnel between the Assembly and the Executive power, which led to the executive's domination. There are also worries about the relationship between the

courts and Assembly in the framework of the use that the courts should make of its issues raised in the Assembly.

6. There are clear evidences of the weakness of the Assembly in censoring the executive authority; as we indicated previously the inability of the assembly to use its tools in checking that the government functions in a right way, such as the right of questioning, the right of interpellation, the right of forming an inquiry committee. Also, the inability of the Assembly in withdrawing the confidence from minister (especially, if he is a member of ruling family) or non-cooperation with the prime minister (which never happened), except in March 2009 as mentioned above, one of the member of the Assembly requested to call the prime minister for interpellation over allegations of misuse public funds and mismanagement, which angered the Amir who then dissolved the Assembly. The government enjoys a majority in the Assembly and is faced by a weak and minority opposition because the number of the ministers constitutes one third of the Assembly's members and the other members either are business people whose wealth is connected to the ruling family or are tribal and are loyal to the Amir, or are sectarian (Shi'a or Sunni) whose position is to the contrary. The absence of political parties also helped the government not to be confronted by the Assembly. The political parties would provide the Assembly with more power and

unity to confront the domination of executive, and this could benefit all the country not merely certain tribal or sectarian sectors.

7. The constitution had provided the executive authority with all the possibilities of hegemony and had given it many warranties, as mentioned above; the executive power enjoyed the majority in the Assembly, it was also provided with experts to deal with the administration or any crisis to reach its objective, the Amir has the authority to appoint his deputy, prime minister and ministers, to declare defensive war and martial law and to sign bilateral protocols or agreements. The executive power also controls political life and holds the affairs of the state. Moreover, these constitutional articles had curtailed the power of the Assembly, which made the Assembly's sovereignty a travesty compared to that enjoyed for example by the Parliament in the UK. Therefore, it could be said that constitution's provisions calling for a balance between the executive and legislative powers did not appear in the constitutional reality and that granting censorship means between the powers to check each other did not really show in political life, therefore, the principle of separation of powers stated by the constitution was not implemented.

8. The executive hegemony also provided stability to the ministerial cabinet because the of the absence of ministerial crises, thus it could survive for a long period. This stability is upheld due to

the prime minister being the Heir Apparent or (as in the present time) a close relative of the Amir, who usually presides over the ministry for all his life and also there is another factor as mentioned above, that the government enjoys the majority in the assembly, which prevents the Assembly from withdrawing confidence from the ministry.

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Marshall, Geoffrey, *Constitutional Theory*, Oxford: The Clarendon Press, 1971, <sup>1</sup> p. 99.

Badawi, Tharwat, *Al-Nizim al-Siyassiyah*, (political system), Cairo: Dar al-Nahizah al-Arabiyyat, 1989, p.322.

Agar, Herbert, *The United States: The Presidents, The Parties & The Constitution*, London: Eyre & Spottiswoode, 1950, pp.39, 48 and Ilbert, Courtenay, *Parliament: Its History, Constitution and Practice*, (12<sup>th</sup> Edition), London: Thornton Butterworth LTD, 1929, pp.222-227.

Kuwaiti Constitution: Article 50.<sup>4</sup>

Kuwaiti Constitution: Article 98.<sup>5</sup>

Ibid: Article 104.<sup>6</sup>

Ibid: Article 150.<sup>7</sup>

Al-Salih, Othman, *Al-Nazam al-Dusturi wa al-Mu`assat al-Siyasiyat fi al-Kuwait*, (Constitutional System and Political Institutions in Kuwait), Kuwait: Kuwait Times, 1989, pp. 701-708

Kuwaiti Constitution: Article 80.<sup>9</sup>

Ibid: Article 56.<sup>10</sup>

Ibid: Article 116.<sup>11</sup>

Ibid: Article 65.<sup>12</sup>

Al-Salih, Othman, *op cit*, p.704.<sup>13</sup>

Kuwaiti Constitution: Article 181.<sup>14</sup>

Ibid: Article 106 and 85.<sup>15</sup>

Internal Code of the National Assembly, Kuwait: Kuwaiti Government Press, 1963, article 97.

Montesquieu, *The Spirit of the Laws*, Book XI, Ch. 6.<sup>17</sup>

Esmein, A., *Eléments de Droit Constitutionnel*, tome 2, (8<sup>ème</sup> édit), Nezdard, Paris, Sirey, 1927, pp. 181 et seq.<sup>18</sup>

Duverger, Maurice, *Institutions Politiques et Droit Constitutionnel*, Paris, 1963, (et 11<sup>ème</sup> édition), p.158.<sup>19</sup>

Kuwaiti Constitution: Article 102.<sup>20</sup>

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Al-Salih, Othman, “Al-Raqabat al-Barlamaniyat ‘Ala I’amal al-Idarat Fi al-<sup>21</sup>  
Kuwait: Dirasat Tatbiqiyat”, *Majalat al-hoquq wal Shari’at*, Kuwait University,  
No. 4, December 1981.

Internal Code of the National assembly: Articles 117-120.<sup>22</sup>

*Ibid*: Articles 121-132.<sup>23</sup>

*Ibid*: Article 129.<sup>24</sup>

*Ibid*: Article 121.<sup>25</sup>

*Ibid*: Article 125.<sup>26</sup>

*Ibid*: Articles 122 and 128.<sup>27</sup>

*Ibid*: Article 123.<sup>28</sup>

*Ibid*: Article 124.<sup>29</sup>

*Ibid*: Article 127.<sup>30</sup>

*Ibid*: Article 130.<sup>31</sup>

*Ibid*: Article 132.<sup>32</sup>

*Ibid*: Article 124.<sup>33</sup>

*Ibid*: Article 131.<sup>34</sup>

*Ibid*: Articles 146 and 148-151.<sup>35</sup>

Hassan, Abed al-Fatah, *Mab`di al-Nizam al-Dustury I al-Kuwait*, (Principles of <sup>36</sup>  
Constitutional System in Kuwait), Beirut: Dar al-Nahda al-Arabiya, 1968, p.327

Internal code of the National Assembly: Article 146.<sup>37</sup>

*Ibid*: Article 148.<sup>38</sup>

*Ibid*: Article 150.<sup>39</sup>

*Ibid*: Article 151.<sup>40</sup>

Internal Code of the National assembly: Article 147.<sup>41</sup>

*Ibid*: Article 148.<sup>42</sup>

*Ibid*: Article 151.<sup>43</sup>

*Ibid*: Article 134.<sup>44</sup>

*Ibid*: Article 135.<sup>45</sup>

*Ibid*: Article 136.<sup>46</sup>

*Ibid*: Articles 141 and 142.<sup>47</sup>

*Ibid*: Article 143 and Kuwaiti Constitution: Article 100-102.<sup>48</sup>

National Assembly Minutes for years 1974, 1994, 2000, and 2002.<sup>49</sup>

Internal Code of the National assembly: Articles 143, 144 and 145.<sup>50</sup>

Kuwaiti Constitution: Article 101.<sup>51</sup>

*Ibid*.<sup>52</sup>

Internal Code of the National Assembly: Article 143.<sup>53</sup>

Kuwaiti Constitution: Article 101.<sup>54</sup>

Internal Code of the National Assembly; Article 145.<sup>55</sup>

*Ibid*: Article 110.<sup>56</sup>

Kuwaiti Constitution: Article 101.<sup>57</sup>

*Ibid*: Article 103.<sup>58</sup>

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## Sources

1. Agar, Herbert, *The United States: The Presidents, The Parties & The Constitution*, London: Eyre & Spottiswoode, 1950.
2. Assiri, Mohammad , *The Government and Politics in Kuwait*, Kuwait, 1996.
3. Badawi, Tharwat, *Al-Nizim al-Siyassiyah*,(political system), Cairo: Dar al-Nahizah al-Arabiyyat, 1989.
4. Duverger,Maurice, *Institutions Politiques et Droit Constitutionnel*,Paris, 1963,(et 11 eme edition).
5. Esmein, A., *Eléments de Droit Constitutionnel*, tome 2, (8 ème édit), Nezard, Paris, Sirey, 1927.
6. Hassan, Abed al-Fatah, *Mab`di al-Nizam al-Dustury I al-Kuwait*, (Principles of Constitutional System in Kuwait), Beirut: Dar al-Nahda al-Arabiya, 1968.
7. Ilbert, Courtenay, *Parliament: Its History, Constitution and Practice*, (12<sup>th</sup> Edition), London: Thornton Butterworth LTD, 1929,
8. Internal Code of the National Assembly, Kuwait: Kuwaiti Government Press,1963
9. Al-Jamal, Yahiya, *Al-Nidham al-Dusturi al Mu`asir fi al-Kuwait*, (Contemporary constitutional system in Kuwait), Kuwait: Kuwait University Press, 1970.
10. Al-Jasim, Najat A., *Baladiyat al-Kuwait fi Khamsin `Aman*, (Municipality of Kuwait in Fifty Years), Kuwait, 1980.
11. Kuwaiti Constitution: Articles 50-151.

- 
12. Marshall, Geoffrey, *Constitutional Theory*, Oxford: The Clarendon Press, 1971
  13. Al-Moqatei, Mohammad, *Dirasat fi Itijahat al-Qada` al-Dusturi al-Kuwaiti: Dirasat Tahliliyah Muqaranat*, (Study of the Kuwaiti Constitutional law`s Trends: comparative and analytical Study), Kuwait University Press, 1999.
  14. Montesquieu, *The Spirit of the Laws*, Book XI, Ch. 6.
  15. Al-Salih, Othman, *Al-Nazam al-Dusturi wa al-Mu`assat al-Siyasiyat fi al-Kuwait*, (Constitutional System and Political Institutions in Kuwait), Kuwait: Kuwait Times, 1989.
  16. Al-Salih, Othman, "Al-Raqabat al-Barlamaniyat 'Ala I`amal al-Idarat Fi al-Kuwait: Dirasat Tatbiqiyat", *Majalat al-hoquq wal Shari`at*, Kuwait University, No. 4, December 1981.