

**Constitutional Review of Article 2 in Kuwaiti
Election Law:
*A Case Analysis of Al-Ajmi v. Ministry of Interior***

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Abstract

This article examines the legal grounds of the Kuwaiti Constitutional Court's decision on the constitutionality of amendments introduced by Law No. 27 of 2016 to Article 2 of Election Law No. 35 of 1962. These amendments, implemented by the government, added conditions for the exercise of the electoral right in public elections. Deemed authoritarian and applied in an illicit manner, these amendments have been colloquially termed the "Law of the Insult."

This article sheds light on individual's constitutional rights in Kuwait, observes the role of the Constitutional Court, examines the rules and terms of the Kuwaiti Election Law, determines the legality of the amendments introduced by Article 2 of the Election Law, and establishes the legal standpoint of the Constitutional Court's decision.

Keywords

Constitutional Rights - Constitutional Court - Election Law- Electoral Right- Administrative Courts - Kuwaiti Courts - Political Isolation - *Law of the Insult*.

1 Introduction

On the September 25, 2022, four days before the public elections, the Constitutional Court of Kuwait ruled against an appeal made by Mr. N. Al-Ajmi regarding the constitutionality of Article 2 of Law No. 27 of 2016. The litigant, among others, was excluded from the parliamentary election¹ candidacy list by a decision of the Ministry of Interior.² The latter, according to the Election Law, has the competence to decide on this matter. The decision was based upon the amendment of Article 2 of the Kuwaiti Election Law No. 35 of 1963. The amendment, which came into force by Law No. 27 of 2016, introduced additional terms to the list of conditions established in Article 2.³ The modification determines the following: “In addition, (to the previous terms), those who are found guilty, according to final court Judgment, of any of the following crimes: insulting a) God, b) Prophets c) the Amir, shall be deprived from exercising the right to run for elections.”⁴

Al-Ajmi challenged the decision made by the Ministry of Interior before the administrative branch of the Court of Appeal, holding that the decision was based upon a non-constitutional provision. The Administrative Court of Appeal decided to temporarily suspend the ban imposed upon the litigant, cease deliberating the dispute, and transfer the case to the Constitutional Court. The Constitutional Court ruled against the appeal made by Al-Ajmi. The court’s judgment was found on the grounds that the appellant did not fulfill the requirements of Article 2 of Election Law No. 35 of 1962, amended by Law No. 27 of 2016; hence the Ministry of Interior’s decision to exclude Al-Ajmi from the electoral candidacy list was lawful.

¹ Kuwaiti Parliament the National Assembly, known in Arabic as (*Majlis Al-Umma*), consists of 50 members, who are chosen in elections that are held every four years. See KUWAIT [CONSTITUTION] Nov. 11, 1962, art. 80 [hereinafter Kuwait Constitution].

² Minister of Interior Decision No. 1031 (2022) (Kuwait).

³ Election Law No. 35 (1962) (Kuwait), amended by Law No. 27 (2016) (Kuwait).

⁴ *Id.*

It is of importance to provide that the amendments made by Law No. 27 of 2016, introduced new restrictions to exercise the electoral right. In addition to the original text of Article 2 of the Election law that deprives from exercising the right to run for elections, those who were found guilty, according to final court Judgment, of a felony or a crime that violates man's honor and integrity. The new amendments added new restrictions to Article 2 as follows; "In addition, to the previous terms, those who are found guilty, according to final Court Judgment, of any of the following crimes: insulting a) God, b) Prophets c) the Amir, shall be deprived from exercising the right to run for elections."¹ This new law is recognized by the Kuwaiti people as the Law of the Insult. This law provoked furious criticism from the public as it viewed as a tool for political isolation.² As provided earlier, the Constitutional Court ruled against the appeal made by Al-Ajmi indicating that the court found the amendments presented in Article 2 of the Election Law constitutional. In light of this judgment, the Administrative Court of Appeal decided to reject Al-Ajmi's request to terminate the decision made by the Minister of Interior banning him from the candidacy electoral list. The litigant challenged the decision before the Court of Cassation, which regrettably affirmed the lower court's judgment.

To attain a better understanding on the subject, it is of importance to shed light on the judiciary system in Kuwait and examine the role and structure of the Constitutional Court.

2 The Judiciary System in Kuwait

The judiciary power is autonomous. The Kuwaiti Judicial System is based on the Egyptian model; it is a combination of Islamic law, English Common law, and the Ottoman Civil Code,

¹ *Id.*

² On January 28th, 2017, the Legislative and Legal Affairs Committee referred to the National Assembly its report regarding five proposals from MPs to amend the Electoral Law No. 27 of 2016, including a proposal "addressing the suspicion of unconstitutionality of the said law, arguing that the text may be applied retroactively to crimes, which were committed before the promulgation of the law." *The 'deprivation of the abuser' law in brief*, AL QABBAS (Feb. 7, 2017), <https://www.alqabas.com/article/355417>.

in addition to the presence of French jurisprudence in regard to administrative law. The Kuwaiti court system is unified. Civil Courts have three levels. Initially, Courts of First Instance consist of Summary Courts (*Juz'i*) and General Courts (*Kulli*) and take cases according to their gravity. The next level is the Court of Appeals (*Esteanaf*) which has jurisdiction over the appealed rulings of the Court of First Instance in pursuance of law. Nonetheless, Courts of Cassation (*Mahkamat al-Tamyiz*) stand at the apex of the system and is considered as the supreme court– the court also contributes to establishing legal rules and to unifying, interpreting, and applying laws.¹ It is necessary to emphasize that among the General Court's System, there are special circuits (i.e., chambers) that deal with administrative litigations. Moreover, the constitution establishes a special court (i.e., the Constitutional Court) to adjudicate disputes relating to the constitutionality of laws and regulations.

2.1 Administrative Courts in the Judiciary System

The Kuwaiti Administrative system was derived from the Egyptian practice. The latter was strongly influenced by the French; therefore, it is not surprising that the Kuwaiti Constitution contains several principles similar to those of the French Constitution. Most importantly is Article 169 of the Kuwaiti Constitution, which deals with 'Administrative Jurisdiction,' that states the following: "The law regulates the settlement of administrative suits by means of a special Chamber or Court and prescribes its organization and the manner of assuming administrative jurisdiction including the power of both nullification and compensation in respect of administrative acts contrary to law."²

Rather than establishing a separate court system like the existing one in France, Kuwait has generally favored a unified

¹ Amiri Decree No. 23, Regulation of the Judiciary Law (1990) (Kuwait). See also NATHAN J. BROWN, *THE RULE OF LAW IN THE ARAB WORLD: COURTS IN EGYPT AND THE GULF* 157-87 (Cambridge University Press 2006).

² Kuwait Constitution, *supra* note 1, at art. 169.

approach. The legislature opted to construct circuits (i.e., chambers) in the existing court system for administrative disputes. These circuits are within the body of *Al-Mahkamah Al-Koleyah* (the General Court).¹ Moreover, as an attempt to correspond with the French Council of State (*Conseil de Etat*), Article 171 of the Kuwaiti Constitution determined that: “A Council of State (*Majlis Dawla*) may be established by law to assume the functions of administrative jurisdiction, rendering legal advice, and drafting bills and regulations, mentioned in the preceding two Articles.”²

In this regard, we can begin by confirming that the Administration can choose to act as a private entity, particularly when it is necessary to run Public Utilities and State-Owned Enterprises with a commercial or industrial nature. This type of action is governed by civil law and falls within the Ordinary Court’s jurisdiction.

It has long been accepted that a public authority may confer a private character upon some of its acts or activities, since engaging in commercial or industrial enterprises is normally subject to the civil law.³

Similarly, a public authority may own what is deemed as private property (*domaine prive*) as distinct from its public property (*domaine public*), and legal questions concerning private property will be governed by Civil Law (*droit civil*), which is decided in the Ordinary Courts. Property is regarded as private when it is managed and exploited by public authority in the manner of a private owner.⁴ However, the general principle is that

¹ Amiri Decree No 20 (1981) (Kuwait), amended by Amiri Decree No 61 regarding the establishment of the Administrative Court (1982) (Kuwait).

² Kuwait Constitution, *supra* note 1, at art. 171. *See also* Kuwait Constitution, *supra* note 1, at art. 171 (declaring that: “Law shall organize the body which shall render legal advice to ministries and public departments and shall draft bills and regulations. Laws shall also regulate the representation of the State and other public bodies before the Courts”).

³ NEVILLE L. BROWN & JOHN S. BELL, *FRENCH ADMINISTRATIVE LAW* 141-202 (Oxford University Press 1998).

⁴ BARRY NICHOLAS, *THE FRENCH LAW OF CONTRACT* 27 (Oxford University Press 1992) (holding that the forest fire-fighting service was held to remain a public service subject to the jurisdiction of the administrative courts).

the acts of public authorities are normally subject to the *droit administratif*¹ and fall within Administrative Court's jurisdiction.²

Although Administrative Courts in Kuwait have the power to revise executive actions, some actions and decisions are immune to court revision. These exceptions are: (a) the Sovereign acts (i.e., the acts of the Executive (government) in correlation with the Legislator (parliament) and the acts related to foreign affairs), and (b) the executive decisions in regard to citizenship, licensing places for religious worship, and the residence and deportation of foreigners.³ However, in terms of reviewing matters related to citizenship, administrative courts have developed new meanings of intervention.

Be that as it may, regarding the case in concern, the Ministry of Interior's decision to exclude the litigant from the parliamentary election candidacy list, is considered an administrative decision, hence falling within the jurisdiction of the administrative branch of the Court of Appeal.

3 The Constitutional Court of Kuwait

The Kuwaiti Constitution establishes a Judicial body to examine the constitutionality of laws passed by the Parliament (*Majlis Al Ummah*) and the regulations sanctioned by the Government. In this regard, Article 173 of the Kuwaiti Constitution states:

“The law specifies the judicial body competent to adjudicate on disputes relating to the constitutionality of laws and regulations and determines its jurisdictions and procedures. The law ensures the

¹ *Id*; See also, BROWN & BELL, *supra* note 9. The rules on administrative contracts have a number of peculiarities compared with private law contracts. These concern the formation, content, and performance of contracts. The rules stem from the underlying need to recognize the predominance of the public interest. The public interest must prevail to extent of overruling the express terms of the contract. The French regard an administrative contract as an arrangement between unequal parties. It is characteristic of the whole of administrative law that the administration has the privilege of *execution d'office*. It can take whatever steps necessary to enforce or supervise the contract without invoking the assistance of the administrative courts. The administration is never the plaintiff. *Id*.

² *Id*. at 141.

³ Amiri Decree No 20 (1981), *supra* note 9.

right of both the Government and the concerned parties to challenge the constitutionality of laws and regulations before the said body. If the said body decides that a law or a regulation is unconstitutional, it is considered null and void.”¹

The provisions of Article 173 above clearly declare that the law shall set the regime and the mission of said system. Article 1 of Law No. 14 of 1973 Establishing the Constitutional Court ² stipulates that “A Constitutional Court shall be established with exclusive jurisdiction over the interpretation of constitutional texts, and in adjudicating disputes related to the constitutionality of laws, decree-laws, regulations, and in challenges relating to the election of the National Assembly members or the validity of their membership. The judgment of the Constitutional Court shall be binding on everyone and all Courts.”

It is of importance to affirm that Law No. 14 of 1973 made the formation of the Constitutional Court consist of judges exclusively. This excludes the political factor acknowledged by the Explanatory Memorandum of the Constitution.³ In addition, the said law expanded the court’s jurisdiction beyond the rule determined by the constitution. Article 173 of the constitution clearly declares that the court is competent (... to adjudicate on disputes relating to the constitutionality of laws and regulations). Nevertheless, according to Law No. 14 of 1973, the Constitutional

¹ Kuwait Constitution, *supra* note 1, at art. 173, declaring “Law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedure.” The tribunal that has jurisdiction to decide these cases is the Constitutional Court in Kuwait.

² Law No. 14 Establishing the Constitutional Court (1973) (Kuwait).

³ Kuwait Constitution, *supra* note 1. Regarding Article 173, the Explanatory Memorandum of the Constitution states: “The Constitution prioritized to entrust the supervision on the constitutionality of laws (and regulations) to a Special Court that takes into account in its formation and procedures the nature of this great mission. Instead of entrusting it to the jurisprudence of each Court separately, with which opinions may conflict in the interpretation of constitutional texts. or exposes laws (and regulations) to be denounced without considering different points of view and considerations. According to this article, the law of the Constitutional Court has the right to engage the National Assembly and even the Government in its formation along with the state’s high judiciary judges, whom are the basis for establishing the correct judicial interpretation of the provisions of laws, foremost of which is the Constitution, the law of laws.”

Court has the jurisdiction to interpret constitutional texts, adjudicate disputes related to the constitutionality of laws, decree-laws, regulations, and set challenges relating to the election of the National Assembly and the validity of its members. It is no surprise that this law was rightfully criticized by some constitutional scholars.¹ Still, this extension on dominion may hold good reasoning.

Firstly, regarding the court's formation, one should emphasize that the Kuwaiti Parliament (*Majlis Al Ummah*) and the Government, responsible for sanctioning the law, decided to exclude any political presence to secure the stability and neutrality of said court. It is common that politicians may have interest in passing some laws that may contradict the constitution. Thus, the board of the Constitutional Court may only include Judges.

Expanding on the jurisdiction of the court, on the other hand, particularly the right to interpret the constitutional texts, is also justified. To be able to examine and then decide the constitutionality of the challenged laws and regulations, the court should first comprehend the constitutional provision in concern. This can be possible only when given the right interpretation.² Certainly, the interpretation of the texts guarantees stability and soundness in application, likewise eliminating any differences in opinion.³ In this regard, the Constitutional Court considers that, "...the interpretation has, a reason, and purpose. The reason or the cause is the ambiguity and concealment of the text, and the purpose is to clarify that ambiguity and concealment."⁴ Moreover, as for settling challenges (i.e., disputes) relating to the election of the members of the National Assembly and the validity of their

¹ M.H. Al-Faili, *The Interpretative Jurisdiction of the Constitutional Court in Kuwait, Pros & Cons*, 23(3) KUWAIT U. J. L. 1, 31-32 (1999).

² O.A. Al-Saleh, *Judicial Oversight before the Constitutional Court*, 10(3) KUWAIT U. J. L. 1, 1, 24-27, 41 (1986); A.A. SAYED, *THE ROLE OF THE JUDICIARY IN INTERPRETING THE CONSTITUTIONAL RULE 239-42* (Kuwait Dar Al-Kutub Foundation 1997).

³ O.A. AL-SALEH, *THE CONSTITUTIONAL SYSTEM AND POLITICAL INSTITUTIONS IN KUWAIT* 653 (Kuwait Dar Al-Kutub Foundation 2003).

⁴ The Constitutional Court, Interpretative Resolution No. 1 of 2017 issued at 20/9/2017 session, published in the Official Gazette (*Kuwait Al-Youm*), Year 63, Issue 1360, dated 1/10/2017, pp. 2-7.

membership. The court jurisdiction in this part corresponding to Election Law No. 14 of 1973 involves disputes concerning the election process, in addition to the results of said election. In this regard, one should stress that, taking into consideration the nature and jurisdiction of the court in concern, entrusting the Constitutional Court with this mission is a sound judgment.

The Kuwaiti Election Law

It is of the essence to understand that the Kuwaiti Parliament (*Majlis Al-Umma*) consists of 50 elected members who are chosen in elections that are held every four years. Article 80 of the constitution provides; “The National Assembly shall be composed of fifty members elected by general direct secret ballot in accordance with the provisions of the Electoral Law. Ministers who are not elected to the National Assembly shall be considered members of the Assembly by virtue of their functions”. The Election Law No. 35 of 1962 establishes rules regarding how to manage the elections, the authority in charge of this mission, and the conditions required for both voters and candidates.

4.1 Regulating the Elections

Chapter 3 of the Election Law determines the terms and regulations in how to administer the election process. The most important provisions of the regulations in concern are the following: the date and schedule of the general election shall be decided by an Amiri Decree. The Decree shall be published in the Official Gazette (*Al Kuwayt Al Youm*) thirty days prior to the election day.¹ In order to run for parliamentary elections one must register his/her name in the list of candidates.² Candidacy requests should be made in handwriting and submitted to the police station of the said electoral constituency within ten days after the publication of the later Amiri Decree. The list of candidates shall be posted in said police station and other places determined by the Minister of Interior and published in the National Gazette within seven days after the end of the enlisting

¹ Election Law No. 35, *supra* note 3, art. 18.

² *Id.* art. 19.

period.¹ Electoral papers shall be printed by the government in accordance with the Minister of Interior's order.² Electoral Committees shall oversee the execution of the elections in the said constituency. The committees are divided into two categories: a) the primary committee, and b) the sub committees. Each committee shall be headed by a member of the judiciary, General Attorney office, or (when necessary) a Public Employee, who is appointed by the Minister of Justice. The committee includes another member appointed by the Minister of Interior. In addition, the committee must include members representing the enlisted candidates.³ The voting process commences at 8 a.m. and concludes at 8 p.m.⁴ After the voting process is completed, the voting boxes shall be sealed by members of said committee and then transferred by the head of committee and escorted by the police force to the primary committee, to start the counting process. Counting the votes shall be supervised by the head of the primary committee and members of the sub committees, in addition to the presence of other members representing the enlisted candidates.⁵ When the vote counting process is done, the head of the primary committee shall officially announce the results including the names of the winning candidates. The voting process and its results shall be documented and signed by the head of the primary committee and delivered along with the sealed voting boxes to the General Secretariat of the National Assembly (*Majlis Al Ummah*).⁶

4.2 Candidates' Legal Requirements

In order to run for the parliamentary election in Kuwait a candidate is required to meet certain terms and conditions. These terms and conditions are determined by Article 82 of the Kuwaiti Constitution and Article 2 of the Election Law No. 35 of 1962. In this manner, Article 82 of the constitution declares that: "A

¹ *Id.* arts. 9, 20.

² *Id.* art. 26.

³ *Id.* art. 27.

⁴ *Id.* art. 31, amended by Law No 67 of 1966.

⁵ *Id.* art. 36.

⁶ *Id.* art. 39.

member of the National Assembly must: a. be originally of Kuwaiti nationality in accordance with the Law; b. fulfills the voter's qualifications in accordance with the Electoral Law; c. have attained at least the age of thirty Gregorian calendar years on election day; and d. have a sound reading and writing knowledge of Arabic". In regard to the first condition, the constitution requires that a member of the parliament must be a Kuwaiti citizen by origin. This means that law would determine the person who is defined as "Kuwaiti citizen by origin", and in this regard Law No.44 of 1994 modifying Article 2 of the Kuwaiti Nationality Law No. 15 of 1959 determined that a Kuwaiti citizen by origin is a person who is born to a Kuwaiti father.¹ As for fulfilling the voters' qualifications in accordance with the electoral law it is of importance to affirm that Article 2 of the Election Law No. 35 of 1962 declares that: *"those who are found guilty, according to final court Judgment, of a felony (i.e. sentenced for at least 3 years in prison), or a crime that breaches man's honor and integrity, shall be deprived from exercising the right to run for elections."* Of course, one's right shall be restored in case of rehabilitation (i.e., restoring credibility by law). It is fundamental to confirm that the law provides no definition for crimes that breaches man's honor and integrity. Thus, the court of dispute shall decide of its own prudence the said crime. In this manner, the Court of Cassation establishes the following:

"The legislator has not defined crimes that breaches man's honor and integrity in order to give the courts some type of discretion. The courts determine the said crime considering the norms and values of the community in concern. Undeniably, these norms are subject to change. However, the community identifies the condemned of such crime to be a person of a corrupt character, with a deviant nature, a despicable soul, and a fallen dignity. Thus, although honor and integrity have no verified criteria, these

¹ Law No.44 (1994) (Kuwait), modifying Article Two of the Kuwaiti Nationality Law Decree No. 15 (1959) (Kuwait).

two inseparable qualities resemble the principles and ideals that people continue to cherish and pay tribute to.”¹

To prevent uncertainty and misjudgment, a group of MPs brought forward a bill to modify Article 2 of Law No. 35 of 1962. The amendment was made to specify crimes that violate man’s honor and integrity, but unfortunately, the parliament did not pass the bill due to political conflict.²

4.3 Law of the Insult

In addition to those who are deprived from exercising their electoral right because they were found guilty, according to final court Judgment, of a felony or a crime that violates man’s honor and integrity, a new law was sanctioned to add even further restrictions on this constitutional right. The parliament promulgated Law No.27 of 2016, introducing new amendments to Article Two of the Election Law. This law is known by the Kuwaiti people as the *Law of the Insult (Qanoon Al Museea)*. The amendments made by this law determines the following: “In addition, to the previous terms, (*i.e., specified on Article 2 above*), those who are found guilty, according to final court Judgment, of any of the following crimes: insulting a) God, b) Prophets c) the Amir, shall be deprived from exercising the electoral right.”³ The Explanatory Memorandum to this law provides the reason behind such revision. The amendment was made to prevent all kinds of insult aimed at God or his divine prophets, in coherence with Article Two of the Constitution,⁴ in addition to preventing any

¹ Court of Cassation, Administrative Appeal No. 1132/2004, (Jan. 24, 2006) (Kuwait).

² The Bill was provided by MPs; *Thamer Al Suwait, Abdulkareem Al Kandiri, Dr. Abdulaziz Al Saquabi* on March 22, 2021, to modify Article Two of the Election Law No. 35 of 1962. The bill names the following crimes as violating man’s honor and integrity: Theft, presenting a check without credit, swindle, fraud, sexual intercourse, indecent assault, kidnapping, adultery, embezzlement of public funds, appropriation, breach of trust, forgery and counterfeiting in all its forms, bribery, impersonation, perjury, liquor and drug crimes, spying on state security, espionage with the enemy, incitement to immorality, prostitution, gambling, and commercial fraud.

³ *Law of the Insult*, Law No.27 (2016) (Kuwait), amending Article Two of the Election Law No. 35 (1962) (Kuwait).

⁴ Kuwait Constitution, *supra* note 1, at art. 2 (“The religion of the State is Islam and Islamic Law shall be a main source of legislation.”) *Id.*

insult aimed at the Amir which corresponds to Articles 45 and 91 of the Constitution.¹ This law was released to prohibit whoever was found guilty, according to final court Judgment of any of the crimes mentioned above, from exercising their electoral right in general (i.e., voting or nominating himself in public elections).

4 The Findings of the Constitutional Court

As mentioned above in the case of Al-Ajmi v. Ministry of Interior, the Constitutional Court ruled against the appeal made by Mr. Al-Ajmi regarding the constitutionality of Law No. 27 of 2016.

4.3.1 Questioning the legitimacy of the Law of the Insult.

The Law of the Insult is a demonstration of legal and constitutional breach to civil rights and freedom. It is of importance to declare that regardless of the noble goals stated in the law's Explanatory Memorandum, the main purpose behind releasing such a law was to prevent specific individuals from running for parliamentary elections. Those targeted individuals include those who are convicted in committing an offence against the persona of the Amir.² Undoubtedly, such practice can be characterized as a legislative deviation. Firstly, the law was sanctioned at the end of the parliament's final session, in a hastened manner, in contradiction to legislative norms and democratic values.³ Respectively, Article 104 of Law No. 12 of 1963, that regulates the work of the National Assembly, determines that a law draft shall be promulgated in two

¹ *Id.* at. art. 54. "The Amir is the Head of the State. His person is safeguarded and inviolable.). Article 91 provides: "Before taking up his functions at the Assembly or at its Committees a member of the National Assembly shall, at a public meeting of the Assembly, take the following Oath: I swear by God Almighty to be loyal to the Amir, to respect the Constitution and the laws of the State, to defend the people's liberties, their interests and their property, and to perform my duties faithfully and sincerely." *Id.*

² Khalid Al Hiwailah, *The Law of the Insult, Law No. 27 for 2016, The Stance of the Constitutional Court and the Court of Cassation*, 8 ALEXANDRIA U. L. J. LEG. & ECON. RES. 1128-98 (2020).

³ Ibrahim Al Hamoud, a Professor of Public Law in Kuwait University, AL JAREEDAH (June 24, 2016).

deliberations within two different sessions; the first deliberation shall take place, at least, four days after the first one. However, in case of necessity, the parliament may carry on the two deliberations of the draft in one session, and this of course requires a special majority vote.¹ Regrettably, the Law of the Insult was sanctioned in one session using the necessity factor. One should question the reason behind passing such law that deprives individuals from exercising their electoral right, thus needing serious examination, in such manner. Additionally, the law introduces new limitations for exercising a genuine civil right. This expansion in restrictions is certainly illegitimate, and at the same time arbitrary, especially in the case of the conviction for the insult related to the persona of the Amir. As the Court of Cassation decides that such crime violates man's honor and integrity, consequently, the law denies individuals accused from committing said crime from exercising their electoral right. Moreover, this unjust law challenges a fundamental legal principle i.e., non-retroactivity of laws. Accordingly, laws shall have only a prospective effect and must not be applied retroactively in such a way as to apply to pending disputes and cases. Compatibly, article 179 of the Kuwaiti constitution decides: "Law provisions shall become applicable only from the date of their coming into force and shall have no retroactive effect. In Articles other than those stipulating punitive measures it may be permissible, with the consent of the majority of members composing the Assembly, to provide otherwise by Law." Likewise, Article 32 determines: "Crime and punishment will be regulated by Law. Criminal

¹ Law No. 12 on the Internal Regulations of the National Assembly (1963) (Kuwait), art. 104, which states: "The second deliberation on the draft law may not be held at least four days before the end of the first deliberation thereof unless the Council decides by a majority of the members of which it is composed otherwise, and the second deliberation shall be limited to the discussion of amendments proposed by the members in writing to the draft approved by the Council in the first deliberation and then finally voted on the draft." *Id.*

punishment shall not be inflicted based on ex post facto laws.” Non-retroactivity of laws is indeed a primary principle in the Kuwaiti legal system; therefore, laws should have only a prospective effect, especially, when associated with crime and punishment. Regrettably, this rule was disregarded in the case of Law of the Insult. Notwithstanding, the law was promulgated on June 29, 2016. Yet, it was evidently applied on those who committed one of the crimes stated in Article 2, even before the law came into force. Mr. Al-Ajmi, the appellant in the examined case, was one of the victims of this illegal application. In 2013, Mr. Al-Ajmi among others was found guilty of offending the Amir’s persona according to Article 25 of State Security Law No. 31 of 1970. In this regard Article 25 determines: “Whoever challenges in public or in a public place, or in a place that anyone who is in a public place can hear or see him by speech, shouting, writing, drawings, pictures or any other means of expression of thought, in the rights and authority of the Amir, or who insults the Amir’s persona, or trespasses on the Amirate establishment, shall be punished by imprisonment for a term not exceeding five years.”¹ Regrettably, many Kuwaiti citizens were charged by this prejudiced provision and lost their electoral rights. Yet when this provision was challenged before the Constitutional Court, the court found the law constitutionally valid.²

In light of previous facts, one is obliged to challenge the decision of the Constitutional Court regarding the constitutionality of Article 2 of Law No.27 of 2016 (i.e. the *Law of the Insult*). The challenge is based on the following grounds.

Firstly, the Constitutional Court recognizes equality as one of the ultimate norms to establish its judgment. Article 7 of the

¹ State Security Law No. 31 (1970) (Kuwait), art. 25.

² Constitutional Court, Appeal Nos. 20-22 (Dec. 2, 2013) (Kuwait).

Constitution determines: “Justice, freedom and equality are the pillars of society; and cooperation and compassion are the firm link binding all citizens.” Likewise, Article 8 determines: “The State shall preserve the pillars of society and shall guarantee security, tranquility and equal opportunity to all citizens.”

Hence, equality and equal opportunity applies in terms of how to legislate and execute laws. It is a fundamental element in protecting individual freedoms and liberties. Article 29 of the constitution establishes: “People are peers in human dignity and have, in the eyes of the Law, equal public rights and obligations. There shall be made no differentiation among them because of gender, origin, language, or religion.”

Accordingly, the Court ruled against any discrimination in treatment towards people who share similar legal status. The court determines that any distinction that is not based upon rational motives necessitates a defiance justice.¹ Therefore, the court should find Article 2 of Law No. 27 of 2016 constitutionally not valid because the law discriminates between two types of convicts. The first who was found guilty, according to final Court Judgment of a felony or a crime that violates man’s honor and integrity, shall be deprived from exercising the right to run for elections. However, one shall have their right restored in case of rehabilitation (i.e., restoring credibility by law). The second who was found guilty, according to final court Judgment, of any of the following crimes: insulting a) God, b) Prophets c) Amir, shall be deprived from exercising their electoral right permanently even in case of rehabilitation. Bearing in mind that all convicts submit to identical legal procedures and were convicted according to the same court system, they thus hold the same legal status. In this manner one would question the logic behind this discrimination in

¹ Constitutional Court, Case No. 6/2019 (Jan. 5, 2022) (Kuwait).

which violates Articles 7 and 29 of the Constitution. One would question the logic behind the Constitutional Court decision on constitutionality of the said law.¹

Although the Constitutional Court acknowledges legislator's competence to regulate civil rights and freedoms, this competence should be executed under a condition not to breach nor demolish said rights and freedoms.² Article 2 of Law No. 27 of 2016 disregarded the legal norm as it permanently deprives those who committed the crimes above from exercising their electoral right as determined by the constitution. Moreover, the Law of the Insult breaches a list of constitutional rights as follows: a) it breaches the right of personal Liberty guaranteed by Article 30 of the constitution, which provides: "Personal liberty is guaranteed." b) Freedom of opinion and expression; in this Article 36 of the constitution establishes: breaches "Freedom of opinion and scientific research. Subject to the conditions and stipulations specified by Law, every person shall have the right to express his opinion by speaking or writing or otherwise." c) breaches Freedom of press and publication established by Article 37 as it provides: "Freedom of the press and of publication is guaranteed, subject to the conditions and stipulations prescribed by Law."

In the light of the preceding facts, the Constitutional Court should exercise its fundamental role defending individual's constitutional rights and freedoms. The Law of the *Insult* ought to be declared unconstitutional.

7 Conclusion

This article examined the legal grounds of the Kuwaiti Constitutional Court decision on the constitutionality of law No.

¹ Ahmad Al- Mutawa, Lagal Opinion on the Constitutionality of the Law of the (Sept. 23, 2022).

² Constitutional Court, Case No. 12/2005 (Feb. 5, 2006) (Kuwait); Constitutional Court, Case No. 20/2015 (Mar. 23, 2016) (Kuwait).

27 of 2016. The law introduced amendments on Article 2 of the Kuwaiti Election Law which added new terms for exercising the right to run for public elections. These terms were considered authoritarian, were applied in an illegal manner, and consequently deprived many citizens from exercising their electoral right.

It is of the essence to assert that the legislator was entrusted by the people to sanction the necessary laws by which to protect and govern society. To protect civil rights and freedoms, the Constitutional Court in Kuwait was established to make sure that the power of the legislator was exercised sensibly and in the right manner. Thus, the court has the competence to decide on the constitutional validation of laws and regulations. Unfortunately, although the court has a significant record in defending constitutional rights and freedoms, in the case of *Al-Ajmi v. Ministry of Interior*, the Court was unsuccessful. The *Law of the Insult* is living evidence of a clear constitutional breach. In this study we have proven that the said law was promulgated in a single parliamentary session using the necessity factor in contradiction to legislative norms and democratic values. Additionally, the law introduced new limitations on exercising a legitimate constitutional right. The law denies the convict of any of the following crimes: insulting a) God, b) Prophets c) Amir from exercising the electoral right. Moreover, the *Law of the Insult* violates Articles 7 and 29 of the Kuwaiti Constitution as it discriminates between two types of convicts that have identical legal status.

Unfortunately, according to the Constitutional Court procedures, the decisions of the court is final and conclusive; thus the *Law of the Insult* is legally active. The only way to revoke this authoritarian and political isolation law is through parliament. We urge the *National Assembly* of Kuwait to restore its historical duty, and to deliver sensible laws that preserve and protect the constitutional rights and freedoms. Thus, for the stated legal facts above, the *Law of the Insult* must be terminated.