A SUMMARY OF THE LEGAL AND JUDICIAL SYSTEM IN THE STATE OF KUWAIT

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PREFACE

Kuwait emerged early in the eighteenth century and its essential elements as a State were completed in the middle of the said century, (1752 AD), when Kuwaitis chose Sabah The First as their Ruler.

They formed a small cohesive society with a concordant social and economic life, under the umbrella of Islam, a tolerant creed and law.

As the saying goes: Every cloud has a silver lining. The Iraqi aggression on Kuwait has unintentionally drawn world attention to this country and its people. The nation took a unified stand before the invasion.

Since its establishment and until 1899 AD, Kuwait remained part of the Ottoman Empire, the representative of the Moslem State. It then fell under British mandate in accordance with the 1899 Treaty until independence on 19 June 1961.

We shall discuss here how Kuwait was managed on the political, legal and judicial levels. To facilitate reading we shall divide the subject into three Sections: the first Section dealing with the period since the establishment of Kuwait or since the essential elements of the State were completed in the middle of the 18th century, until the constitution of the State of Kuwait was issued in 1962. The second Section will expound the legal and judicial system in the State following the constitution to date of creation of the national council. The third Section will deal with the development of legislation.

1. SYSTEMS OF KUWAIT SINCE ITS ESTABLISHMENT UNTIL THE 1962 CONSTITUTION

A. The Pre-Council Period

As the population in Kuwait increased, the Kuwaitis thought the presence of an Emir was necessary to resolve their problems, differences and disputes. Hence, they chose Sabah the First as their ruler, completing the essential elements of state: the territory, population and governing authority.

Naturally, social life was primitive and simple with only the sea and desert offering a landscape (a primitive and easy life to lead). All problems, major or minor, were
solved by the Emir, though some differences that occurred in the market places were
referred to members of the Emir's family, appointed for these purposes.

Whenever, the Ruler found great difficulty in resolving a problem, particularly
those related to Islamic Shari'a, he would refer it to a judge from among the men of
religion, whose judgment was immediately effective.

If the case was relevant to a certain profession, men of experience were then the re-
ference; their decision in such event was an effective ruling.

The Ruler during this period did not possess any legislative power, while the legal
basis were derived from two sources: First, Islamic Shari'a (law) applied, in particular,
in the field of personal statutes, and men of religion passed judgments on all cases
referred to them; Second, Customs—the major source of law at the time, in the
absence of any written law or regulation. Certainly, custom was for the most part
locally and professionally based and legally binding to all.

In addition to the above sources, the Ruler always consulted sages on all decisions
related to governing the country, and was never an autocrat.

B. The Advisory Council (1921)

In 1921, a 12-member council was formed and chaired by the Ruler who was present
in all meetings and consulted about important issues. Administrative Councils were
established along with the Advisory Council due to the development of social, economic
and cultural lives. Expansion in the city and the growth in population made it neces-
sary to enhance municipal, educational and health services. Special departments were
then introduced to facilitate necessary utilities.

Each department had its own council (Municipal Council—Education Council—
Health Council) of 12 elected members who met weekly under the chairmanship of a
member of the Royal family deputising for the Ruler and reporting to him. The role of
those bodies was only consultative, each in its specialisation and not legislative.

The judicial authority remained in the hands of the Ruler who passed judgment on
all cases and referred criminal and personal statute cases to an Islamic Shari'a Judge,
to be dealt with according to the provisions of Islamic Shari'a law.

Cases, however, were referred at times to senior merchants who passed judgments
according to established commercial norms and traditions. Yet, the Emir's judicial
power diminished during this stage to govern only the Kuwaiti subjects and Moslem
foreigners. Otherwise, the judicial authority was vested in the British High Commis-
sioner in Kuwait who rendered judgments in litigations between the British subjects
or between the non-Moslem foreigners; a duality that would culminate in a new judi-
cial organisation law in 1959, as we shall see later.

C. The Legislative Council (1938)

With the role of the Advisory Council coming to an end, the Legislative Council was
elected in a special way; a committee was formed comprising three notable Kuwaitis.
A selected list of the electorate was made and the elections were carried out in the
house of a Kuwaiti citizen without any control over the results, concluding with the