A Minister's Political Responsibility for the Actions and Activities of Public Institutions and Authorities [1]

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Introduction:

Since its independence in 1961, Kuwait has operated under two types of administrative systems: the central and the de-central modes of administration. They operate under various sets of political, financial, and administrative conditions; Favoring one system over the other in back and forth swings of a type of administration. Under these two types of management systems, the vital and essential functions of the state are only reserved and handled by the government. These functions represent the core and the essential activities affecting the country, and is thought of as the functions that represent the safety and well-being of the state, of which can not be administered by any other type of organizations. These essential responsibilities in the Kuwaiti form of administration are centrally administered and never allowed any form of independent bodies to handle them. Examples of these essential responsibilities are the foreign affairs, justice, preliminary education, national budget, army and police, etc.

On the other hand, functions less essential to the wellbeing and safety of the state are handled differently, where the legislators have placed some of the burden of governance of these less essential functions into a decentralized administrative system. This form decentralized organization reorganized into their two forms of regionally and publicly administrative authorities (PAA). This latter type of legislative organization is based on the Kuwaiti Constitution's Article 133, which states that "the law shall organize public authorities and public bodies of municipalities in a manner to ensure their independence under the guidance and supervision of the government".

(1) This article is based on a chapter in the LLM thesis entitled "Minister's Political Responsibility for the Actions and Activities of Public Institutions and Authorities" submitted by Ms Eman Ebraheem ALShareedah. The full thesis may be accessed from the Kuwait International Law School's library.

In regards to the first central form of administration, and just like most governments around the world, the Kuwaiti government operates according to specific constitutional articles. Such articles specify that the "Council of Ministers oversees all of the country's needs, benefits and requirements, plans the general policy of the country, oversees its implementation, and manages the works of the governmental departments"(1). In this Article, the Constitution place the responsibility of all governmental activities in the hands of the Council of Ministries, headed by the Prime Minister (PM). Furthermore, "the Prime Minister and ministers are collectively responsible to His Highness the Amir (HHA), for the general policy of the government, and each individual minister is responsible in front of him in regard to the activities of their respective ministries"(2). Under this article, each individual minister is responsible to the head of the state over the activities performed in each of their assigned ministries and Portfolios. Meantime, "every minister shall be responsible to the National Assembly for the affairs of their ministries…"(3). These constitutional articles clearly specify where the responsibilities of the government activities lay. The latter article places the burden of responsibility upon the shoulders of the minister, due to the works and activities of his ministry, and an overall burden on the council's members, on the general policy of the government. Additionally, each minister, individually, is responsible in front of both the head of the state, HHA, and the General Assembly, for their action in implementing the government's policies and the general laws passed by the assembly, and to the quality of these works and responsibilities.

As it can be seen from this organizational set up, high burden of responsibilities are placed on the shoulders of the ministers, given that "….the number of ministers, all, must not exceed one third of the number of the assembly"(4), leaving the total number including the Prime Minister to no more than sixteen. This is due to one part that "the National Assembly consists of fifty elected members. The unelected ministers are regarded as member of the assembly, due to their assigned

(1) Article 123 of the Kuwaiti Constitution.

(2) Article 58 of the Constitution.

(3) Article 101 of the Constitution.

(4) Article 56 of the Constitution.

post"[1], That leaves the number of ministers to oversee the complete organizational set up of activities of the government to a small number. Due to the ever-increasing population and their needs, more organizational activities are required, which in turn, would add more burden on the shoulder of the ministers. Consequently, and due to these ever-increasing needs, the Kuwaiti government had resorted to the route of decentralized form of administration.

To elevate some of this burden, and to facilitate better service to the public, the government has created organizational units, apart from the ministries' works and activities, and made them an independent or semi-independent units, according to sets of organizational rules specified in the laws of each unit. However, these units of organization, since they are all still governmental organizational units, must ultimately be under the governmental responsibilities, as they have been traditionally placed under the ministers, who act in a form of supervisory role. Given the ever-increasing addition of these independent units to the organizational structure of the government, this has created the question of whom these administrative units really answer to? And to whom the responsibility of their activities is given? These question are commonly asked by the government, and often when a motion of no-confidence vote is invoked in the assembly against one of the ministers, the ministers claim that the responsibilities are in the hands of the boards of directors and heads of these independent units, where the ministers are mere member of these boards. On the other hand, the members of the National Assembly have different ideas, stressing that, even though the ministers are only members of boards of these units, the constitutional articles place the burden of responsibility on the ministers, who are representatives of the government. This kind of wrangling between the two sides erupts quite often between political groups, for their own political reasons, which is truly in need of clarifying and in need of putting it to rest.

However, the constitutional constraints discussed above limit the number of ministers to no more than 15 in addition to the Prime Minister, bringing the total number to 16 posts that form the government's Council of Ministers. That situation forces some ministers to head more

(1) Article 80 Chapter IV of the Constitution.

than one ministry as their prime responsibility in addition to their supervisory role of these 32 authorities attached to their offices. That burden of responsibilities created by the constitutional limitations on the membership of the council. The ever-increasing addition of public authorities has created this question of the large degree of responsibility of each minister. Each of these public authorities, as we shall see, has varying degrees of independencies, created in the first place according to the laws passed by the National Assembly, whose members have been continually questioning the ministers on the action and activities of these authorities. The political fallout of this questioning could lead to the dismissal of the minister from his post, and sometimes could lead to the collapse of the government itself. Therefore, the objective of this study is to examine the degree of authorities given to the presiding ministers and the degree of independence given to the Kuwaiti public authorities and institutions, as legislated in the laws, and hence determining the responsibilities of the ministers over the activities and actions of these public bodies. Determining such responsibilities could put the continuous political tension between the ministers and the members of parliament to rest.

This research is divided into two chapters: the first chapter discusses management and the governing laws of public authorities and institutions in Kuwait; while the second chapter tackles ministers' responsibilities over public authorities and institutions. To illustrate this practice of creating the public authorities in the country, some examples of high and low administrative supervision of public bodies, as created by the laws, are examined. The authorities and responsibilities of ministers on the activities and actions of the public authorities, as actually existed in the Kuwaiti laws, will be investigated in Chapter II, leading to the investigation of the means available and tools used by the Kuwaiti National Assembly to supervise, in turn, the ministers against these ministerial authorities and responsibilities. Finally, the limitation of the minister's responsibilities over the acts of public authorities and institutions, within the framework of the laws, are discussed in chapter IV. These limitations are governed by the tools and means of supervision used by the Parliament, which involve the use of parliamentary questions, request of discussion of formal investigations, expression of wishes, and formal inquisitions.

Chapter I
Management and Governing Laws of Public Authorities and Institutions in Kuwait

1.1 Introduction

Public authorities and institutions are created as a direct implementation of the idea of decentralized administrative management. In this concept, these public bodies are expected to play a central role in delivering services and goods to the public, without the cumbersome rules and regulations required by the government or its branches. This concept has proved its effectiveness around the world of helping governments in serving their own people in more efficient ways. These established public authorities and institutions take different shapes and forms, depending on the activities they are entrusted with. These activities could span all forms of activities that the government is involved with, such as the economic, commercial, industrial, scientific, and cultural ventures.

Although the intention of creating such independent units is to have them operate in some degree of relative independence from the government. The precise degree of independence is determined by the law setting up each public unit. The degree and scope of supervision practiced by the central authority is variable from one country to another, and even differs from one instant of supervision to another in the same country, depending on the nature of the activities practiced by such public units. Therefore, this chapter is dedicated to the discussion of the degree of responsibility of the minister over public authorities and institutions, the types and forms of public authorities and institutions, and the legal system administered in Kuwait in relation to comparable laws of other countries.

1.2 Defining of Public Authorities

Before embarking on the discussion of the minister's responsibility towards these public and decentralized units, it is important to discuss the definition of public authorities and institutions and to standardize their meanings. Public authorities and institutions are commonly de-

fined as the public bodies that are given legal personality, independent of the minister or government or the legislators; created by central authority to perform specialized duties as defined by law, and are subjected to its terms and conditions(1). Alternatively, they could be defined as sectors that are owned by the government. They are either investment ventures or services ventures, and could be of other forms. In these scenarios, they function in the public domain, serve the public, owned by no individuals, and supervised by the central government that pays compensations for their employees(2).

Other definitions of public authorities exist in other Laws. One such law is the Egyptian law No. 60 issued in 1963, concerning the public authorities. It states in its explanatory memorandum that a public authority is "a person among general public persons, practicing industrial, commercial, financial, or agricultural activities, and has independent budget system, managed in accordance with the commercial budget practice"(3). The Qatari law No. 26 in its first article defines public authorities as a "virtual public legal person entrusted with un-commercial public duty, performing public services"(4).

On the legislative front, regarding the definition of public authorities and institutions in Kuwait, the Kuwaiti laws have not set clear and specific definitions for these public bodies. It merely tackles them in scattered phrases in different laws without setting specific legal understanding of these units.

In different common laws, however, public authorities and institutions are cited as "public bodies", and defined as entities that are provided partially, or wholly, with monies through a governmental minister(5). There are other names cited for the public authorities and institutions

(1) Alaidhy, Mohammed, A., The Legal System of Bodies and Public Institutions in the Laws and Regulations of the Gulf Cooperation Council, Egypt, Dar Alnahdha Alarbia, 2012, p. 26.

(2) Alaidhy, Mohammed, A., ibid, p. 26.

(3) Alaidhy, Mohammed, A., ibid, p. 28.

(4) Law No. (26) For the year 2004 issuing a law for public bodies and institutions (This law have been canceled). Retrieved March 24, 2015, from http://www.almeezan.qa/LawP..aspx?id=220&language=ar.

(5) Hogan and Morgan, Administrative Law in Ireland,Round Hall, (4th edition, 2012), p. 85.

and they are termed as “quango”. This term is mostly used in both the United Kingdom and Ireland. In these two countries, the understanding of public authorities and institutions is that they are organizations or agencies financed by the government and act independently. In other words, they are organizations financed by the taxpayers and are not controlled directly by central government(1).

Public authorities and institutions are those units created by the state and given legal personality. Such organizations are entrusted with managing publicly owned facilities, provide services to the public, and controlled by board of directors. The board of directors is appointed by the competent minister or by the government and supervised by a minister.

1.3 The Practice of Creating Public Authorities and Institutions in Kuwait

The idea of establishing public bodies in Kuwait is relatively new. The idea first surfaced in 1960 before independence, in which the government, through law No. 41 created the Kuwaiti Monetary Council. The Council was given a legal personality and furnished with an independent budget. Its duty was to issue monetary items for the country and to supervise their circulation, and it was supervised by minister of finance(2). This law was replaced by law No. 32/1968 by which the Central Bank of Kuwait was created, taking the responsibility of the earlier Kuwaiti Monetary Council, and it is still supervised by the minister of finance.

In the following sections, the legal basis of creating public authorities and institutions in Kuwait is discussed, and the regulations and types of divisions of these public bodies will be explained.

1.4 Legal System for Public Authorities and Institutions in Kuwait

Perhaps one of the most difficult obstacles facing the administrative system in Kuwait is the lack of a unified law that organizes public

(1) In an article called Q&A: What is a quango?. Retrieved March 24, 2015, from http://www.bbc.com/news/uk-politics-11405840

(2) Alaidhy, Mohammed, A., ibid, p. 154.

bodies and institutions. The legislative system in Kuwait, as it stands today, has been in operation under several fundamental articles in the Constitution, covered below, that specify the general framework for public organizations. Constitutive articles are general and left it up to the legislators to organize each individual public authority and institution through each corresponding individual law. It appears that the founders of the Constitution left it in that way purposefully, so that this foresight can give more flexibility to legislators to build laws to meet the objectives of each organization. However, this flexibility created different levels of supervisions and responsibilities for each individual public institution and authority. Consequently, confusion in the mind of the legislators was the result in a way that they handle the parliamentary questioning of supervising ministers as shall be seen in Chapter IV(1).

In general, public authorities and institutions are created by virtue of a law or through another tool equal to it, the law decree(2). Creation of public bodies is based on and according to Article No. 133 of the Constitution, which states that "The law shall organize public institutions and the administration of municipalities…..". This constitutional article is regarded as one of most important articles concerning public authorities and institutions. It places the burden of organizing public bodies in the hands of the legislative body, and forms the fundamental base for organizing public authorities and institutions. In addition, Article No. 156 states that "The law shall specify the rules and regulations pertaining to the budgets of local and public authorities and institutions, of independent legal personality, and their closing accounts." It also completes the grounds for the creation of public authorities and institutions. Even though these two constitutional articles form the scope of creating public bodies, they neither set a clear perimeter to the extent of the minister's responsibilities toward public organizations nor define how the public can be protected against harmful actions of created

(1) Example of countries that issued laws to organize the establishment of public authorities is Lebanon. It issued law No. 4517 in 1972.

(2) The administrative authority issues decrees when the legislative authority is in recession, or in other circumstances as defined by the Constitution. These decrees, however, must be submitted before the legislative body at the first session, when it comes back. If the administrative authority fails to bring up these decrees to the attention of the legislative body, the decrees become invalid. Further information is available in article 71 of the Kuwaiti Constitution.

public bodies. Moreover, these articles, and laws so far, neither set the degree of the supervision nor its extent over public organizations. Given that, there is a need to supervise and direct policies and actions of units. Such supervision, on the other hand, must not supersede the needs of these units to exist independently and practice their legislated authorities. For the lack of clear constitutional direction, the Kuwaiti government resorted to set of individual supervision guidelines in each law, when creating each public authority and institution, as previously explained. However, one of the fundamental principle of the law is that the given responsibilities must and shall be equal to the given privileges.

Article No. 123 of the Constitution specifies that the Council of Ministers has the primary role in supervising the activities of all government departments(1); while article No. 130 specifies that the competent minister is to supervise the works and activities of assigned ministry and to follow the general policy of the state(2). These two articles set the ground rules of the supervision and the responsibility emanating from the works and activities of the government departments before both the Amir and the Parliament.

1.5 Kuwaiti Law No. 116 of 1992 for Administrative Organization of Public Bodies and Delegation of Authorities

In addition to the constitutional articles specifying the creation of public bodies, as discussed in the previous section, a very important law to organize public units and the delegations of authorities were passed for the first time in 1992(3). Law No.116 clarifies some aspects of organizing public authorities and institutions. In this law and in its subsequent explanatory memorandum was an attempt to determine the authoritative responsibility of the minister over public bodies, and

(1) Article 123 states that «Council of Ministers shall have the control of the departments of the state and shall have the authority to formulate the general policy of the government, and pursue and supervise its execution».

(2) Article 130 specifies that «Every minister shall be responsible for the supervision of the affairs of his ministry and the responsibility of the execution of the general policy of the government, and has the authority to formulate the directives for the execution of these responsibilities".

(3)This law has been nullified and replaced by another law passed in 1986.

the responsibilities toward the Council of Ministers and other ministers. In its first article, the law specifies that "it is permissible, via a legislative law, to transfer the assigned, the supervised and the attached public units, as specified in laws organizing public institutions and authorities or independent departments, from the domain of Council of Ministers, or ministry, or minister, (transferor), to the Council of Ministers, or to ministry or to any minister, (transferee) ..."(1). This basic article indicates the mechanism by which the responsibilities from one minister to another or from ministers to the Council of Ministers can be transfered, if there is a need to shift authorities over the public institutions and authorities.

The second article of the same law states that "The competent minister supervising public institutions, public authorities, or independent departments that directly belong to him, or are attached to him, or to his ministry, shall have the authority to issue directives in order to implement the general policy, and the general development plan of the country. He has also the authority to follow the work activities of these organizations to meet the objectives as set forth in their corresponding laws, to insure that they abide by the regulations and common laws, and to follow the directives issued by the Council of Ministers, or any specific activities specified in their corresponding laws". In the second article, the foundation of the minister's authorities had been laid down, and hence, his responsibilities over the publicly created authorities and institutions. The articles also specify that the minister's authorities are not absolute; however, they are limited and tied by the general decisions and policies of the Council of Ministers and the prevailing common and specific laws of the country. The law setting up a public unit also indicates that the heads of these organizations solely bare the responsibilities of their organization in front of the presiding minister.

Further to these indicative articles of the minister's responsibilities, the explanatory memorandum of the law regarding the second article

(1) Due to this article, the Kuwait Fund for Economic Development of Arabic Countries (KFEDAC), was formed by law 25 in 1975, specifies in its first article that, the Kuwait Fund is a public authority given an independent legal personality, supervised and heading the board of directors the Prime Minister, the supervision and heading the board of directors have been shifted in 2003 from the prime minister domain to the responsibility of the minister of foreign affairs, through law 157/2003.

clearly shows that it is the responsibility of the presiding minister to share all the difficulties and problems facing these public bodies with the rest of the members of the Council of Ministers, and propose resolution. This burden is necessitated by the rule of the common ministers' obligation toward the Amir and the National Assembly of Kuwait. Additionally, Article No. 3 of the law indicates that there is a central role of the Council of Ministers to play toward public bodies. This article states that the "Council of Ministers shall issue a decision to specify the rules that regulate relationships and cooperation between ministries, public institutions, public authorities and independent departments, and the council has the authority to distribute and determine the common work activities between these public organizations in a way that corresponds to their main work of activities. The council has also the authority to assign some of the work activities of any one of these organizations to another organization, should these activities be in relevance to the main activities of other organizations, and when it is deemed important for the improvement of the works. In addition, the council shall have the authority to assign any specific work activity to any organization, should the council see fit for the betterment of the works. Moreover, the council shall have the right to form common committees comprising of members from these organizations and forestall in them the authority to issue executive orders in matters that the council sees fit and according to the regulations the council sees appropriate". In this article, the role of the Council of Ministers is specified to be of major obligation in organizing public authorities and institutions; hence, placing much more burden of responsibilities upon itself. That indicates that the Council of Ministers not only places the responsibility wholly upon the shoulder of the minister, but it also shares responsibilities with him.

There are heavy supervision burdens requested of the minister over public organizations and their boards of directors. That can be seen in Article No. 2 of the law 116/1992 as it tries to establish the same hierarchical authority as the minister practices over his ministry and over the satellite departments. The minister can use the same principle of the delegation of authorities that he uses over his ministry, as a hierarchical system, over the independent public authorities and institutions under him, as stated in article 5 of this law. The article,

number 5 of the law, states that, "… the minister can delegate some of his authorities to: …Boards of directors, heads of board of directors, or director generals of public institutions, and public authorities, under his supervision."In this article the law had treated the heads of public authorities and institutions as the same as the general secretaries and under general secretaries of ministries and placed them all on the same footings of treatment, regarding the delegation of authorities. In this form, the law had established a very tight form of supervision, to the point that these public organizations tend to be less independent, but rather close to being another branch of the central government. In addition to this article, regarding the minister's delegation of authorities, article 6 of the same law also had specified the second level of the delegation of authorities. The article stated, "Board of directors of public institutions and public authorities can delegate some of their authorities, assigned to them by the laws, to the head of the boards, or to committees formed and comprised from some members of the boards, after acquiring approval from the competent ministers. Consequently, the heads of these boards can then assign some of their acquired authorities to their deputies, director generals, or deputy director generals". This article shows that the minister has the final say on the internal affairs of the administration of these public authorities. The minister also has to agree on the arrangement of authorities within the board of directors or within the upper management of these organizations, much of the same line of authorities given to the minister as that over the governmental ministries and departments.

Even though the laws of the public bodies specify that they are independent entities, as usually stated in the first article of their laws, the governing law no. 116 of 1992, had stripped away some of this independence by having heavily administered supervision, as seen from the forgone paragraph.

However, the most striking tool of control over these independent authorities is the budgetary system. This is clear from the law decree no. 31, of in 1978, regarding the preparation of the budgets of these independent authorities, where it states in article 43 that, the Minister of Finance is the authority to determine the scope of budgets of all of public authorities and institutions active in the country. Due to this authority, the Minister can approve (or disapprove) the budgets, when

they are raised to him by the board of directors of these public authorities. In addition, article no. 47 of the law indicated that all of these organizations must prepare quarterly reports on their budget expenditures, to include any matter that are requested by the minister, and be raised to the minister. Additionally, the minister, according to article no 49 of the same law, must draw the attention of the council of ministers to the budgetary status, and the closing account of public departments and public authorities and institutions, regardless of their independent personalities. It is clear from the article, regulating the governmental budgets, that this law had stripped what had left from the independent status of these public institutions.

On a different point, the law no. 30 of 1969 of the audit system in Kuwait, through the State Audit Bureau, asserts that even though public authorities and institutions are independent bodies, they all must still be subject to the audit process of the State Audit Bureau, just the same as the process taken for the governmental ministries and departments. This mandatory audit requirement, imposed over public authorities, is observed from article number 5 of the law 30, issued in 1969. The article states that, "audits shall include the following: First: all ministries, departments, and public interests administered by the state system, second: Municipalities and all local authorities of independent personalities, third: institutions, authorities, and public organizations owned by the government or the municipalities, or any others local organizations of any public independent personalities..." In addition to this article, another article, no. 33 of the audit law, specified that, "should there be a dispute between the State Audit Bureau and any organization subjected to the auditing and as the result of audit procedures, the dispute shall then be raised to the Council of Ministers, for which the council shall decide upon it. The decision of the council shall then be final". Again, there appears to be another level of supervision that all organizations, independent or not, must be subjected to regardless of their status. Not only do they must submit to the will of an audit bureau, but also they must accept the final decision of the Council of Ministers, as it has reserved the final say to itself. All of these multitudes of supervisions and audits are requirements that the public authorities and institutions must go through and accept, regardless of the terms of their laws, and regardless of the terms specifying, clearly in their laws that they are independent.

Contrary to the Kuwaiti laws concerning creating public organizations, the French laws are based on the constitutional article no. 34, which established the foundations and basics for creating public bodies. In that article[1], the objectives and aims, the rules and regulations governing personals, their appointments, roles, and level and positions, the privileges given to board members, financial support, and finally the administrative supervisors are all outlined. That kind of constitutional framework of establishment is not present in the Kuwaiti laws.

In addition, the French law grouped the public authorities into categories of administrative, commercial, financial, industrial, etc., and once the need arises to form a new authority within these groups, then it can be easily handled by the government alone and issue a governmental decree to that effect. That was done to shorten the legislative cycle, since the frameworks of the laws were already established. However, for new authorities that are not grouped within the existing ones, the legislative parliament will issue a new law specifying its type and which group it should be assigned to. The reason for this legislative organization is that the financial and costs of privileges are meant to be controlled and decided by the parliament alone, and that is when new categories are to be recognized and added to already legislated categories[2]. This is the general ground rules for the form of authorities to supervise, administratively, the public authorities in France; however, the organization of these public authorities differs vastly, when issuing the governmental decrees. The differences are recognized for the public units according to their sizes, objectives and importance, and according to the types (administrative, economical, industrial, cultural, educational, territorial, collectivities territorial, etc.), in which an impression is given to an observer that there were no ground rules existing to govern these public units. Territorial and Collectivities Territorial were recognized according to the law issued on the 2ed of March 1982, recognizing and organizing territorial public units.

(1) The French Constitution, issued Oct. 4th, 1958, from http://www.consell-Constitutionnel.fr/consell-Constitutionnel/root/bank_mm/arabe/Constitution_arabe.pdf.

(2) Dallmayr, Winfried, R., Public and Semi-Public Corporations in France, Law & Contemporary Problems; Sep1961, Vol. 26 Issue 4, p. 756, From:http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2904&context=lcp

The supervision over pubic units, in the French law, is practiced through different degrees and levels of authorities. The public units that are active in clear and specific objectives, such as the ones that are entrusted with distributing public assistance, are supervised directly by the Minister of Finance, overseeing the distribution of assistance and supervising levies and income funds. On the other side, for public units that are active and having multiple of objectives, a discussion is continuing, until now, to distribute the supervision of each public units to more than one administrative authorities, so that each administrative authority (the minister) can supervise the part that falls to within his domain of authority(1). This kind of supervision does not exist in the Kuwaiti laws. In addition to this ministerial supervision, local and regional authorities have also the right to supervise the local and the regional public units, in the same manner. On top of these supervising authorities, the administrative audit and control units practice their usual check and balance work, as a form of supervision, over these public units to ensure quality and control over distributing and collecting the public funds.

In contrast to both the Kuwaiti and French laws, the English laws and legal system, which are both entirely different and based on British and Northern Ireland form of administration, handle the establishment and base of responsibility of public authorities and institutions in a similar legal way, but with different way of implementations. The similarity can be seen from the recent act passed by the UK parliament on Dec. 14th, 2011, under the name of The Public Bodies Act(2), which gave the ministers the power to merge, abolish, funding arrangement, modify objectives and transfer functions through separate legislation, in similarity to the Kuwaiti law no. 116 of 1992. In addition, the act lists public bodies into five categories, corresponding to the powers specified in the act(3). The reason told for passing such an act was to

(1) French State Council report about Les établissements pubslic, issued 15th, Oct., 2009: http://www.conseil-etat.fr/Decisions-Avis-Publications/Etudes-Publications/Rapports-Etudes/Les-etablissements-publics

(2) Public bodies reform act: from https://www.gov.uk/giodamce/public-bodies-reform.

(3) Categories of public bodies (a guide for departments), Dec. 2010, p. 15, https://www.gov.uk/government/uplaods/system/upload/attachement_dat/file/70075/categories_public_bodies_Dec12.pdf.

facilitate changes forwarded from the coalition government at that time, and to provide a mechanism for future changes to these public bodies upon future reviews. In particular, these public bodies are established to serve multitudes of administrative, commercial, and regulatory functions, and are created under the Companies Act; however, some public bodies are created by a Royal Charter. In this later establishment process, the units are to serve as part of the Crown and have their own legal personalities.

Public bodies, under the British laws, operate with varying degrees of autonomies, function under the direction of their own boards of governors, and operate independently from the minister or the sponsoring departments; however, they are accountable to the concerned minister, the Parliament, and the public for their services and performance. Their funds are generated through grants from the sponsoring departments, the government, or from their own generated levies on some of the services they render to their respective sectors they serve. Therefore, they are accountable for their own budgets, required to present annual reports, of their spending, to the sponsoring clients. Examples of such public bodies are the British Council, Arts Council of England, Information Commissioner, and the Parole Board. This type of organization reveals that, the sponsoring clients, and upon reviewing the annual reports, and if not satisfied, could cut their funding, partly or altogether, from the non-performing public units. That makes the supervision over public units more direct and with immediate consequences.

Political responsibilities in the British law are completely carried out by the parliament itself and not by the government or by any of its ministers, since it was the body that established, bestowed personal status, and determined the objectives of these public bodies, which is a fundamental function dissimilar to the laws in Kuwait. However, the involvement of the government with such responsibilities increases(1). In addition, these public authorities can be sued before courts, should they breach the trust given to them, or violate any term of the laws organizing them. Additionally, the British Government is taken a stand, since 2010, to decrease the number of public authorities active under the supervision of the government, for financial reasons, since these

(1) Alsharif, Azizah, ibid, p. 225.

public bodies inflect a heavy burden on the taxpayers. For that reason, the government sought to restructure these public units, to make them more transparent and accountable. In a report issued in 2015 by the government, it had stressed the following:

"For public bodies to maintain the trust of citizens, they must be made more accountable to those they serve, and demonstrate continuous improvement in the services they deliver. The public expects the decisions of a public body, spending public money, to be overseen by a democratically elected representative whose actions can be debated in a clear and transparent way"[(1)].

It is clear from this new direction of the British Government that, the intention was to involve the public of tax-paying citizens in monitoring and supervising these public bodies, as another level publicly held supervision.

1.6 Types and Divisions of Public Authorities and Institutions in Kuwait

Public authorities and institutions in Kuwait could be divided into several types, depending on the nature, objectives, and the activities that they practice. These public organizations can be divided according to the economic, industrial, or commercial ventures, in which they manage their business, in view of prevailing economic factors. This kind of division helps the Council of Ministers to determine which of the ministers can handle which of these ventures. Examples of this possible division, are the Public authority of Ports, and the Public Authority of Investments, in which each one of them provide economic services, practicing their dealings according to the international norm of business. Alternatively, they could be of another form that deals with providing service to the public. Examples of this type are the universities, colleges, hospitals, etc.

In contrast, the French law defines the universities, research and cultural institutions, museums, and any other study organizations as public authorities, with independent personal statuses. While the French laws group public bodies into various categories, as a system

(1) Public bodies, Cabinet Office, UK Government, 17 December 2015, From:https://www.gov.uk/government/publications/public-bodies-2015

of recognizing public bodies for ease of legislation, the French experts differ in the way these public institutions are categorized. One expert considers them as commercial public bodies since they levy monies for their services, and another considers them as administrative bodies serving the public, while some other experts group them into a mixed category, altogether. They finally settled on defining them as mixed public bodies operating on grounds of private commercial enterprises, since these bodies inter into commercial contracts, beside their normal educational and research business. For that matter, the earlier law issued in 3/1/1968 has been changed and replaced by two new laws, one for public research, issued in 15/7/1985, and the other for higher education, issued in 26/1/1984.

In addition to the above categorization, the Kuwaiti legislators had organizes public authorities and institutions into other types, depending on the nature of their budgetary systems. The distinction between these budgetary systems is dependent, by turn, on the nature of their businesses. The two budgetary systems known in Kuwait are the independent budget system, and the attached budget system, which are defined by the civil service law no. 15/1979.

The importance of these divisions stems from the principle that, the level of authorities must be equal to the level of responsibilities. Therefore, the minister's responsibilities in front of the Council of Ministers and the national assembly, because of his supervision, can be determined by the individual laws of each public unit. These laws, as shall be seen in the following section, vary in degree of closeness of the supervision by a minister, from one law to another.

1.7 Public Authorities and Institutions Subject to Wider Ministerial Supervisory Authority

In principle, and as mentioned previously public authorities and institutions are governmental units created to manage state's business independently, where the role of the concerned minister is only a supervisory role over these activities, practiced according to the law of establishment, without interfering with their status of independence. However, in some cases the law can give the concerned ministers wider role of supervisions to degrees and scopes of authority close

to the authority of hierarchical authority, much like the authority they practices over their ministries, and employees. In some instances, the law can appoint ministers as head of the board of authorities, giving them the authority of executive officers, allowing them to interfere in the daily activities of the authorities. This wider power is legislated for the ministers despite the status of legal personalities and independent standings, and independent budgetary systems stated in the same law of these public units. The following is an example of this type of public authorities that are subject to wider scope of supervision authorities, given to the minister by the law:

1.7.1 Kuwait Petroleum Corporation

The Kuwait Petroleum Corporation is a public authority regarded as one of the most important public institution in Kuwait, because of its contribution to the economic wellbeing of the country. The corporation was established by the decree no. 6 in 1980 to oversee all activities of the oil sector in the country. In the first article of the law, it described the role of this public authority as an economical authority overseeing the production, refining and distribution of oil. The first article also privileged the corporation by being independent and having a legal personality, with a direct supervision by the minister of oil. In addition, the corporation manages its budget independently away from the government budgetary system, and manages it on the same terms as of commercial organizational management, that is according to article no. 17 of the law.

The management of the corporation, as a public authority, and the role of the minister in its structure, is specified by article 17, section three in the law, specifying that, "the corporation is managed by a board of directors, formed and headed by the minister of oil, and a decree shall be issued according to the recommendation of the minister, involving the followings: a) The nature and the selection of board's members, and the appointment of a deputy board head, specifying the number of the board members and length of their membership, and their remuneration, b) The system of board meetings and its governingregulations, the majority rules to achieve decisions, and the regulations that render these decisions final, c) The organization of

the board's committees and the regulations that governs their works d) The conditions and regulation of selecting executive directors from the members of the boards, and their authorities and responsibilities." As it can be seen from this article, that the minister plays a formidable role in forming and selecting members of the board, setting regulations and rules of decisions making, selecting executive officers and setting their responsibilities and authorities, which gives him the authorities to dictate his will unopposed. In matter of fact, the minister is the only focal point of every matter of business in the management of the organization, which makes him, due to this wide range of authorities, the sole responsible individual toward all activities of the corporation. This kind of wide authorities is inconsistent with the independence granted to public authorities, and makes the minister politically responsible for all activities of the corporation toward the national assembly. The role of the minister, as a supervisory figure representing the central governmental authority, should have been separated from the role of an executive head of board, which can dedicate his full time and energy to the management of the organization, with some degrees of authority. Moreover, the law has given the minister an executive power to manage the corporation, and became part of the decision mechanism of the origination, making him in a similar position as the position of hierarchical authority as his original ministry.

Another peculiar article stated in the law, that formed the corporation, is article 15, which specified that, "the head of the board (the minister) represent the corporation legally in front of the courts, and towards all others for all matters concerning the corporation."This article also adds that, the board head is the owner of signature on behalf of the corporation in addition to his deputy and whomever the board assigns to, and according to rules and authorities, the board sees fit. Beside this, earlier board organization, decree no 17 passed in 1980, has added more authorities to the minister, in which it stated in its first article, that board of the corporation cannot meet unless invited by the minister, and article no. 9 of the law had organized the nature of making decisions in the board meetings by giving the minister the final voice, when votes are equal. However, article 10 of this law, stated that, "no decisions are

final unless they are approved by the minister"[1]. That brings a total domination over all forms of activities and decisions making, and at any and every level of the corporation's structure to the minister.

The budgetary allocation of this public authority is independent from the budget system of the government, as stated in article 17 of the law of establishing the Kuwait Petroleum Corporation (KPC), and managed according to the common commercial budgetary systems. This independent budgetary system is understandable, since the corporation deals in an international environment, and needs that much of independence to deal with the business of making commercial deals.

It can be concluded from the above articles of the laws governing the public authority KPC that the legislator had given the minister of oil a wide range of authorities over the management of the corporation. Not only does it gives the minister the authority of supervision, but also had given him an executive power over the decision making of the board of directors. Moreover, the legislator had given him the authority to appoint and dismiss member of the board and the executive officers of the organization. This end of the spectrum type of supervision and the wide authority given to the supervisory authority can be understood, since the corporation deals with the oil sector, the source of income the government so dependent on. In this scenario of management, the government seemed to have opted for a creation of an authority that has the advantages of independence, away from the government cumbersome regulations, and the tight control of government supervision. However, this tight control, and the complete centralization of the supervision had brought this public authority very close to hierarchical type of management.

(1) It must be added here that, in principle, the authority of approval is given to the minister in the decentralization system of government, as mentioned in chapter II, where in this system the minister has the right to approve or disapprove, without having the authority to amend or alter the decisions.

1.8 Public Authorities and Institutions Subject to Low or Limited Ministerial Supervision

On the other side of the scale, other public units are loosely supervised by the concerned ministers, representing some degree of the independence as intended for public authorities. Examples of such public unit is as follows:

1.8.1 Capital Markets Authority

One of the clearest examples of authorities established with limited governmental intervention is the Capital Markets Authority (CMA). The authority was established by law no. 7 in 2010, to organize the activities of the financial markets of Kuwait, and to encourage openness and objectivities of the dealings in this important sector of the economy(1). Despite article 2 of the law stating that, "a public authority with an independent personality status, called Capital Markets Authority, shall be established and supervised by the minister of commerce and trade", the law has given the minister only a very limited level of authority over the works of this authority, as it will be seen in this section.

Most of the authorities over the CMA'S activities are practiced through the head of the board of directors, away from the minister's supervision. On the other hand, the legislator had given the minister the authority of only appointing the board's members. Article 6 of the above mentioned law states that, "the board of directors, shall be called the council of commissioners of capital markets, comprising of five full time members, appointed by a decree, upon a recommendation of the minister, and the decree shall name the head of the council and his deputy." Moreover, article 11 of the law states that, "a decree shall be issued to determine the remuneration of the council head, his deputy, and all of the other commissioners, and of any other benefits to be dispensed from the authority's budget, upon a recommendation from the concerned minister." In these two articles, the scope of authorities given to the minister is defined and very limited, in which he has no representative in the council of the commissioners, nor has he any authority to call for meetings, as the minister has in case of the Central Bank of Kuwait. The authority to call for meetings is a form of

(1) See the official site at http://www.cma.gov.kw/Ar_Objectives.cms

authority normally given to the minister, in all of the public authorities in Kuwait, to enact on matters the minister or the government sees fit.

The law includes another article that shielded the Authority from the interference by any other departments of the government, cementing further the independence of the authority. This particular provision of the law is stated in article 16, specifying that, "without prejudice to law 12 issued in 1960 regarding the establishment of the department of legal advice and legislations, a legal department shall be established under the head of the authority, entrusted with dealing directly with all legal matters, and representing the authority in front of all courts, and with regard to arbitrations, investigations, advisements, preparation of laws, regulations, decisions, and bylaws regarding the organization of the markets." This article has exceptionally exempted the authority from dealing with the department of Legal Advice and Legislations, established by law 12 of 1960, which has been entrusted with full authorities to represent the government, and all of its public independent public units, in front of the courts, preparing laws, and issuing official decrees. This exception is clearly a major step towards a truly independently managed public authority.

Moreover, the same article has also dealt with the appointment of personel in the authority in the same way. The article added that, the council of commissioners has the authority to establish bylaws and the regulations pertaining to the personal and personel remuneration, without adhering to the rules and regulations of the civil services bureau, unless there exit special laws specifying otherwise. In addition, the head of the council of commissioners has the same authorities as of a minister and the head of the civil services bureau, concerning the personnel of the authority."It is clear from this article that, not only the council has the authority over the staff of the authority as a whole, and their remunerations, but also the head of the council has the same authorities as that of a minister and the head of the civil service bureau, together, concerning personel appointments and their remunerations. Thus, the law has given the authority unprecedented combined authorities.

The budget set up of the authority is also another complete departure from any other system of organizing budgets for public indepen-

dent authorities. This is evident form article 18 of the law, stating that, "the authority shall have an independent budget, prepared according to the executive bylaw of the authority." That clearly indicates that the authority prepares its own budget according to its own bylaws, without any interference from the government or any other governmental affiliated departments and bureaus. That also means that the authority can set levies and spending levels according to its own created bylaws without following any other common laws of the government. That also means that the authority is exempted from following the common law no. 31 issued in 1978, article 49, concerning the rules and regulation of setting up governmental and public units' budgets, and their execution and supervision. The article in that law, of 1978, says that all budgets must be passed to the minister of finance for his comments and approval, before passing to the Council of Ministers for final governmental approval, in preparation for the national assembly deliberation and approval. These budgets preparation procedures is one form of supervision over budgets spending, involving the concerned minister, the Council of Ministers, and the national assembly, all together, from which the CMA is exempted. The only form of supervision given to the minister, is stated in article 25 of the CMA law, specifying that, "the authority shall forward an annual report to the minister, to be passed to the Council of Ministers, within 120 days from the end of the fiscal year, specifying the activities and works of the authority during that year, and shall include the authority's bank accounts, and auditors' reports." This article is seen by some writers to contradict article 49 of law 31/1978, concerning the general procedure of preparing and supervising budgets, as stated above. This had created uproar by some in the national assembly, early on 2015, which lead to placing an inquisition against the concerned minister for that matter, even though the national assembly was the one who has passed that same law, with its controversial clause. (Inquisition practices in Kuwait are discussed in next chapter).

In addition to the given authorities to prepare and execute its own budget, independently from any governmental interference, the law has further cemented the scope of authorities given to the CMA through article 23, concerning additional exemption from the rules and regulations of the Bureau of Audit, and the Public Tendering Commit-

tee. This article states that, "without prejudice to afterwards auditing by the Bureau of Audit, the authority does not submit to the prior auditing of the Bureau of Audit, nor it shall submit to the law of tendering no. 37 of 1964 concerning tendering, or its amendments." Where all governmental departments and agencies submit to the auditing procedures, and follow the rules and regulations of tendering, the Capital Market Authority is the only public unit that does not submit to either of these processes(1). To cap off all of these exemption the law further states, in article 164, that, "this law is a special law and its rules are special, therefore all common or special laws in contradiction with any of these rules shall be invalid", emphasizing unprecedented independence from any form of attachments to the government or to any of its agencies and bureaus. Again, the legislators have gone so far as to grant such wide and far independence measures to this authority to manage its own business without interferences, perhaps is due to its independent source of its budget apart from the central government. The CMA levies fees of sold shares in market.

The CMA's scope of authorities limited the role of the supervising minister to a very minimum role, that he has only the authority to name the members of the council of commissioners. That minimum role entails minimum responsibilities, according to the principle of the level of authorities must equal to the level of responsibilities; however, some members of the national assembly do not see it that way. That is evident from the inquisition proceeding invoked by national assembly member, Mr. A. Alturagii against the Trade and Commerce minister Mr. A. Almadaage, inquiring about the minister's role in supervising the CMA and his role over the activities of the authority, which clearly was not under the minister's responsibilities. (This inquisition and others will be discussed in chapter II).

The constitutional view on this particular authority, established by law 7 of 2010, was introduced by the constitutional expert Prof. Mohammad AlMoqatei, in which he pointed out that, governmental agencies and organizations are established by two means, either through constitutional

(1) See article 2 of the law 37 issued in 1964, regarding importation, purchasing, and committing construction by governmental departments and public authorities, requiring approval by the Public Central Tendering Committee.

article 73, or through article 133[1]. The establishment of governmental agencies and organizations by means of the first article constitutes a hierarchical way of organizing things that makes the established bodies function under the direct control of the central government, without having independent means to act on their own wills. This direct control is practiced by the Council of Ministers, the Prime Minister, or any one of the ministers, that includes all forms of authorities over policies, direction, and activities of these established governmental units.

The central government for this kind of organization can change decisions and substitutes itself instead of these governmental bodies at will, and at any time it so chooses. While through the second means, according to article 133 of the Constitution, the established organizations act and behave independently on their own will, according to set of objectives given by law.

This independent behavior is granted by the law with a guided supervision by the central government, as a mean of practicing a decentralized form of governance, with some sort of authorities that allows the government to appoint some members of councils, object to some decisions, or even stop the operations, unless these public bodies have special status given by law. This special status is clearly given to the CMA, as declared by the law 7 of 2010. Therefore, this authority enjoys a complete independent status, with a superficial attachment to the central government, allowed by the Constitution and the law to meet its special objectives.

Prof. AlMoqatei also indicated that, the CMA is an independent organization managed completely by a council of commissioners with an absence of any form of governmental administrative guardianship, to suit its purpose of being independent to meet its objectives, in its dealings with the important economic markets. The special status given to this authority stems from the need to shield the authority from any governmental interference, and brings confidence in the management of the markets. In addition, the law has brought the authority closer to the same level of independence as the Justice Council, and the Central

(1) AlFadhaly, Souad, The independence of the Capital Market Authority is a red line legally and constitutionally, 28th September 2011, Alqabas newspaper. From http://www.alqabas.com.kw/Articles.aspx?ArticleID=737605&CatID=353

Bank of Kuwait, bringing the governmental supervision to a level of superficiality, according to the law.

The special law 7 of 2010 has been legislated through the National Assembly, which has the power to legislate any laws with any particular objectives and intentions that it sees fit, without any bounds or restriction placed on its will. Therefore, the National Assembly has chosen to grant a special and completely independent personality to the CMA, and has specified the means of appointing the commissioners, and the authorities of the head and the council of the commissioners, in a way to ensure a complete power to handle the management, done through articles 8 and 9 of the law. In that way, the decision of the head or the council of the commissioners are shielded from the government interference, and the dismissal of the commissioners is also taken away from hand of the government, once they were first appointed by a decree. This is legislated intentionally, so that the decisions taken by the head and council of the commissioners are ensured the integrity and objectivity needed in that particular environment.

Chapter II
Ministers' Responsibilities over Public Authorities and Institutions

2.1 Introduction

It was clear from the legal system of creating public bodies, as discussed in chapter I along with the presented examples thereof that, this system did not show a regulated or a uniform concept of thought. It showed that most laws regulating these public authorities and institutions gave vast and wide authorities to the presiding ministers, providing them with the means to supervise their activities, up to and close to that of the hierarchical authoritative supervision. On the other extreme some laws gave little or even no supervisory authorities to the ministers over these public bodies, and other times the laws gave some sort of authorities that lie in between, with no clear evidence of the reason for that kind of scattered way of legislation. These differences showed no common denominator or thoughtful rational behind them.

The granted hierarchical authority given to ministers to practice over their ministries is an absolute one, and naturally comes along with it an absolute responsibility, according to article 58 of the Constitution. However, the limited authorities of the ministers over the activities of public bodies even with those wide and encompassing authorities given to them by the laws is another matter that needed to be defined and distinguished. The distinction between these responsibilities and the obligation of the minister over the activities of the ministry is important, since these two extremes are legislated through two different legal concepts, and entail two different types of political responsibilities. Therefore, it is important to define the responsibility, in general, and the political responsibility in particular, since political responsibility is an ultimate tool, when invoked, it may lead to the removal of a minister from his office. In addition, it is important to discuss the ways and means available to the parliament to supervise the works of the ministers, as means of correcting miss actions, ensuring adherence to the laws, and saving public interests, as intermediate tools used before reaching the ultimate tool of the political responsibility.

1.2 Responsibility: definition and types

In general, responsibility is the judgment of a higher authority over a person's actions committed contrary to his assigned duty. Consequently and due to the nature of this duty, the level of the responsibility changes according to the level of misconduct. Therefore, the responsibility that falls onto the minister's shoulders can be defined as the failure to carry out the full commitment of ministerial duty(1).

Responsibility and constitutional balance of power, between the parliament and the government rest on two foundations, the first one is the right of the parliament to invoke ministerial responsibility against the government for misconducts, and second is the right of the government to dissolve the parliament for failure to cooperate. In this balance of power, each side has its own means and tools at its disposal to use for an outcome that must benefit the citizen of the state. The government has at its disposal the use of collective responsibilities against any action of the

(1) Alsharif, Azizah, Constitutional limits of the responsibility of the minister for public institutions, The Law Journal, March 2000, (Volume 1, issue 24), p. 208.

parliament, concerning the general policy of the government. However, each minister bears, himself, the individual responsibility of his actions in his own ministry(1). That is according to article 58 of the Constitution, which stated that, "the Prime Minister and the whole ministers, collectively, are responsible to the Amir for the general policy of the state, and each minister is responsible to him for the woks of each ministry". In essence, this responsibility spans the whole members of the government, including members of the government who have taken odd standing with some of the general policy of the state, and including the Prime Minister himself. This umbrella of responsibility cover only the actions committed in implementing this statewide general policy.

In its collective responsibility, the whole of the government is responsible before the National Assembly and the Amir of Kuwait, as pointed out in Chapter I, where the assembly has the authority to supervise and question the actions taken to implement that general policy of the state. This collective responsibility is regulated by the Constitution article 102, legislating that, "The Prime Minister does not head any ministry, and the National Assembly does not cast vote of no confidence in him. Should the National Assembly see fit, according to the previous article that the assembly could not cooperate with the Prime Minister, then, the matter shall be raised to the head of the state, and for that matter, and the Amir shall relieve the Prime Minister from his duty, and appoint another prime minister, or shall dissolve the National Assembly. Should the new elected national assembly decide, by the same majority, to cast a vote of no cooperation in the Prime Minister again, then the Prime Minister is considered relived from his duty from the date of casting this vote, and a new council of minister shall be formed".

This collective policy is not bounded only by the actions taken by ministers in their ministries, in executing the general policy of the state, but it also can spans the action and activities rendered by the public authorities and institutions, involving the execution of this policy. For that matter, the National Assembly has the very right of responsibility to challenge the government collectively in lieu of actions and activities performed by these public bodies. The responsibility of the minister on the actions and ac-

(1) AlSultan, Ahamed, Y., The Inquisition in Kuwait and Egypt, Master Thesis, Law School, Tanta University, 2008, p. 55.

tivities occurring in public authorities and institutions under his supervision is, however, an individual responsibility in first place, and is not meant to include the collective responsibilities of all of the other ministers. This individual responsibility of the minister before the parliament and the Amir is an individual accountability for the actions and activities performed under his direction, and supervision, by him or by any of his employees under his authority, in his ministry or by any of his attached public units, for actions of which did not fall within the general policy of the government(1).This kind of responsibility is regulated by article 101 of the Constitution.

In that respect, the minister is to stand for political accountability before the national assembly or His Highness the Amir, should he commit misconducts in his domain of responsibilities. However, the minister could also bear other severe responsibilities, which could include the criminal and the civil responsibilities, where he must defend himself in front of the courts for those responsibilities. In case of criminal proceedings, for crimes committed during his tenure, the minister may face the special ministerial court, designed in accordance with article 2 of law no. 88/1995, and according to the constitutional article no. 132 concerning the establishment of a special criminal court, designed especially for the ministerial misconducts. Article 132 states that, "a special law shall determine the type of crimes that ministers commit during their tenure of conducting their duties, and shall determine the procedures and regulation of charging them before a special court of justice, without prejudice to applying other common laws against committed actions or common crimes, and civil responsibility committed during their tenure.

This special court of justice is designed to look into the criminal behavior for intentional breakage of the law, apart from the political responsibilities that the minister must face in front of the National Assembly, for incorrect decision taken during his supervision of the public bodies. In addition to these types of responsibilities, the minister must also be responsible for his own conducts as a single citizen. Should he commit any misconduct of breaking the common laws of the state, then he must face the common courts of justice, just like any other citizen, whether he committed them before, during, or after his ministerial tenure(2).

(1) AlJaaidy, Bader, M., The balance between the executive and legislative branches in a parliamentary system, Egypt, Dar Alnahda, 2011, p.168.

(2) Alsharif, Azizah, ibid, p. 207

For civil proceedings against ministers, the same legal framework must be followed, and in particular to what article 132 of the Constitution had stressed in its last clause pertaining to holding ministers responsible for the civil acts committed during their active duties as ministers. Based on this article, the ministers are not immune from civil litigations before common courts, should they mishandle their positions to harm or cause civil harm to persons or the public.

Political accountability is the most important proceedings that ministers must face in front of the national assembly, since it encompasses all other responsibilities of the ministers. In theory, the minister bears the consequences of his misconducts in handling his duties in his ministry, while the whole Council of Ministers bares the consequences of their handling of the general policies that govern the country. In practice, however, this proceeding is used quite often in parliamentary debates for political gains against the government.

This political responsibility is the right of the parliament to cast votes of no confidence against all of the ministers, or in one particular minister, should they commit acts of miss-conducts, as that right is guaranteed by article 101 of the Constitution. This political responsibility comes about and against minister(s), should the parliament becomes dissatisfied with the general policy of the government or the policy of an individual minister. In that case, the ministers must resign their posts, immediately after a cast of vote of no confidence in them, or gain confidence, should the parliament fails to gain enough votes against the minister(s)[1].The Kuwaiti Constitution, however, did not allow no-confidence proceedings in the whole of the government. It instead allowed the impossibility to cooperate as a mean of no desire to cooperate with the government, as that is regulated by article 102 of the Constitution[2], which will be discussed in the following sections.

(1) Alsultan, Ahamed, Y., ibid, p. 56.

(2) Article 102 of the Constitution stated that, the Prime Minister cannot head any ministry, nor can he be subject to no confidence vote against him in the parliament, however, if the parliament sees according to the process of pervious article that it is impossible to cooperate with him, the matter must then be raised before the head of the state. It is then up to the Amir, where he can either dismiss the prime minister and appoint new government, or dissolve the parliament. In case of dissolving the parliament and should the new parliament decide by same majority the impossibility to cooperate with the same prime minister, then the Prime Minister is regarded as dismissed from his post from that date, and a new government shall be formed.

2.3 Tools of Parliamentary Supervision

Parliamentary supervision is the second most important political duty that the parliament holds on checking on the governmental activities and actions, beside its duty of legislating new laws, or amending existing ones. To balance off the formidable executive power of the government, the Constitution has given the parliament several tools of supervision to check upon the government as whole, or on the activities of ministers as singles. These tools start with voicing simple questions to the government or to any respective ministers, and ends up with sever punishment of the ministers by casting a no confidence vote in them. The followings are some of the tools that are available to the members of the parliament:

2.3.1 Parliamentary Question

Questioning the actions or behavior of the Government is the first line of supervision that a member of the parliament may voice against any member of the government. This tool is legislated in order for a member to acquire information, clarify facts, and acknowledge governmental policies, alluding to facts, or pointing to miss conducts and a misuse to the government funds(1). This right of voicing questions is a fundamental privilege given to the members of the parliament by the Constitution as regulated by article 99. This article state that, "every member of the parliament has the right to direct questions or inquiries to the ministers or to the Prime Minister, on matters pertaining to their specialized duties, and only the questioner has the right to comment on the answers received once."In addition, the standing orders (internal bylaws) of the National Assembly, article 121 and 132, had established the process, procedures, and conditions of voicing that right.

That privilege of directing question, at times, had been mishandled and misused to a point of directing unlawful inquiries and demands to members of the government, resulting in the disturbance of the political process. An example of such unlawful inquiries is the question directed by a member of the parliament in 1982 to the minister of health requiring him to provide the names of patients sent for treatment abroad. The minister refused to provide these names as doctor patients privi-

(1) Altabtabei, Adel, the Constitutional System in Kuwait, 4th Edition, 2001, p. 916.

lege would have to be violated if he divulged this information to him, even to a member of the parliament. The unsatisfied member of the parliament insisted on knowing the names of patients and sighted the constitutional privilege, hence, directed a second inquiry, demanding of the minister to provide him with the requested information, as put in the first inquiry. Again, the minister refused. Furious, the member of the parliament changed the inquiry into a political inquisition, resulting in a decision by the Council of Ministers to ask the Constitutional Court to clarify this privilege as stated in article 99 of the Constitution.

In its reply the Constitutional court had decide that, "members of the parliament are guaranteed the right of directing questions to members of the government, according to article 99 of the Constitution, however, this right is not absolute, and is bounded by the constitutional rights of the individuals. These guaranteed rights of individuals include the personal freedom, which in turn guaranteed by the Constitution, to keep personal information and secretes safe including individual's personal health and type of illnesses. Consequently, keepers of medical secretes, including minister of health, must not divulge patients' secrets, unless approved by a patient himself or by the terms of the law"(1).

In a similar, but separate incident, a member of parliament had lodged a question to the minister of finance, in 1999, regarding the Central Bank of Kuwait, which is an independent public authority. He requested information on the dealings of the bank, inquiring about the dispensed cash money if it had been given to any ministerial departments or public bodies upon their requests, during specific period, and requested documents.

The minister obliged by providing the information on the cash spending forwarded to the governmental department and public authorities and institutions, but declined to provide documents to the member of the parliament, citing article 28 of the monetary law no. 32/1968(2). Due

(1) Council of Ministers requested a Constitutional interpretation in its council meeting 45/1982, and Constitutional interpretation issued by the high court under 3/1982, dated 8/11/1982.

(2) The law stipulated that› board members, department managers, employees of the Kuwait Central Bank are prohibited from divulging any information regarding the operation of the bank or the other banks under its supervision, except the information allowed by the law. The minister of finance shall define the type information prohibited from circulation, after conferring with board of directors of the bank.

to the objection of the member of the parliament, the government again asked the high Constitutional Court for another interpretation of the article 99 of the Constitution regarding parliamentary question, in which the Constitutional court, after considerable time, answered in 2005(1). The decision came out with general guidelines(2).

With these general guidelines, the Constitutional Court had put up a complete set of rules and regulations on the parliamentary question, when voiced against the members of the government, and closed a loophole that was a source of continuous political disruptions.

2.3.2 Request of Discussion on General Subjects

Request of discussion on a general subject, not on the agenda of parliamentary debate, is another form of supervision right granted by the Constitution. Article 112 of the Constitution declared that, "it is permissible for five member of the parliament to request discussion on a general subject on the parliament floor, to clarify the policy of the government, and to exchange ideas about it. It is also permissible for the rest of the members of the parliament to participate in the discussion."Article 146 of the standing orders of the parliament, stressed on this right, as being a fundamental right available to the members.

This supervision tool gives members of the parliament the right to entertain any subject that they may see important at that moment of time, and can put it up for the discussion. The discussion may include any subjects or matters concerning the internal or external policies of the government. This tool is regarded as the only mean of exchange of ideas and thoughts, and a form of cooperative effort between the

(1) The interpretation of article 99 was requested by the council of minister in its meeting no. 54-2/2003, dated 23/12/2003. The high court decision came out on 11/4/2003.

(2) Lately, a parliament member had requested information from the Minister of State Affairs for the Council of Ministers, through a parliamentary question, regarding the activities of the Central Council for Dealing with Persons of Unlawful Residence in the country, which is an independent council, attached to the Council of Ministers, and does not have an independent personality. The minister declined to provide the requested information, sighting the unconstitutionality of the question, and the contradiction with the standing orders of the National Assembly, and the ruling of the Constitutional Court. More information on: http://www.kna.kw/clt/inner.asp?id=23196.

government and the parliament, in order to arrive at a common consensus on matters benefiting the public. Recommendations may or may not come out of this discussion; however, opinions are voiced, and exchanges of ideas are given[1].

2.3.3 Formation of Investigative Committees (parliamentary investigation)

Parliamentary investigation is a common tool available to members of the parliament, practiced in Kuwait and many other countries as well, that follow the parliamentary system. This granted right is an important mean of supervision in order to check upon the activities and works of the government. The Kuwaiti Constitution, in article 114, has outlined this right, and stated that, "it is the right of the national assembly, at any time, to form committees or elect a member or members to investigate any matter or incidents that fall in its domain or responsibility. Ministers and all of the governmental employees shall present the facts and documents at their hands to the investigative parties." In addition, article 147 of the standing orders of the parliament stressed this right again.

The main objective of forming investigative committees is to search for facts concerning a particular incident, an activity, or a policy[2]. This investigation is practiced through forming investigative committees from members of the parliament or through electing member(s), to examine the information presented to the parliament, when members of the parliament thinks there exist a serious doubt about some of information that had been given to them[3].

2.3.4 Parliamentary Expression of Wishes

Parliamentary members are allowed to bring to the attention of the government some wishes, either regarding the implementation of laws

(1) Aleazib, Faleh, A., The limits of Parliamentary Control in Kuwait Constitution, Egypt, Law school, Cairo University, 2009, p. 150.

(2) Aleazib, Faleh, A. ibid, p. 157.

(3) AlMoqatie, Mohammed, A., Parliamentary Investigation in Kuwait The Scope and Restrictions (Critical and Analytical Study in Accordance with the Kuwait Constitution), Kuwait International Law School Journal, Volume 1, issue 1, March 2013, p. 62.

or about general subjects. This tool of engagement is regarded as a form of cooperation with the government for the benefit of the public, however, these recommended wishes are not compulsory to the government to implement, and have no legal repercussions. Nevertheless, this tool is regarded as an important political means of cooperation with the government, suggesting some views and directions for the government to follow as a mean of general supervision(1).

This right of voicing wishes is organized by the constitutional article 113, stating that, "The National Assembly has the right to express wishes to the government concerning public matters. Should the government be unable to implement these requested wishes, then, it must stateto the Assembly the reasons thereof. The Assembly may comment on these stated reasons once." In addition to this constitutional article, the standing orders of the National Assembly, articles 117 through 120, have also stressed on this right and defined its rules and regulation(2).

2.3.5 Formal Inquisition

This is a formidable tool of supervision available at the disposal of the National Assembly against any member of the government. If the other tools used by the parliament did not result in cooperation of the government to the well of the parliament, or the parliament did not get the information or the facts it needed to fulfill its supervisory role, this tool is used to hold the government as a whole, or any particular minister, accountable. This tool means, in essence, an accusation of the government or any of its members of miss cooperation or misconduct(3). Therefore, this formal inquisition into the action of the government or any of its members is a highly important and formi-

(1) Alsaleh, Othman, A., Parliamentary Supervision on the Administrative Works of the Kuwaiti Government, Theoretical and Practical Studies. Collage of Law and Sharia Journal, 4th issue, Dec. 1981.

(2) Constitutional expert Prof. Othman Abudlmalek had commented on the right of the parliament to express wishes to the government at the initial Constitutional council (the first council to draft the Constitution of Kuwait), that, expressing a wish to the government is analogous to placing a question, that each, a member of the parliament and the government, can express their opinions on the floor or the assembly.

(3) Aleazib, Faleh, A., ibid, p. 167.

dable way of supervision that may lead to the dismissal of members of the government. It is one of the tools that is used for to hold any member of the government politically responsible. On the other hand, this step could also be very dangerous, if misused, or miss handled to punish political foes.

Due to the importance of the balance of power between the Government and the parliament, most Constitutions specify this tool of supervision as another fundamental right given to the parliament to invoke, should it appear to it that a member of the government had committed a gross misconduct. However, this right is given in a broader context in the Constitution, leaving the standing orders of the parliament to specify its process and all other details of practice(1).

Due to the importance of this form of supervision, and the different processes taken to invoke this formidable tool, a legal definition will be introduced, along with discussion of the way it was organized in the Kuwaiti laws.

2.3.5.1 Definition of Inquisition

French legislative law had defined inquisition against the conducts of a minister as the right of the parliament to gain information related to the general policies or to the administrative activities of a minister, in an official inquiry, in order to obtain the minister's position on a specific matter or on a policy(2).

Other definition is given by Pro. M. AlMoqatei quoting that, it is a heavy form of questioning to reveal the behavioral integrity of a minister on matters under his supervision. That questioning could include specific questions directed to the minister at the end of the inquisition(3). Pro. A. Alsharif described it as, a means of gathering facts to invoke responsibility and to cast a no-confidence vote against minister(s). It is

(1) AlReshediy, Abdullah, H., Ministerial Inquisition, Theoretical study Applied to State of Kuwait, the Law Journal, Volume 39- issue 1, March 2015, p. 330.

(2) Habib, Maha, J., Inquisition as a tool of parliamentary control in Kuwait Constitution (A comparative study), Master Thesis, Law School, Kuwait University, 2004, p. 15.

(3) AlMoqatei, Mohamed, A., The parliament Inquisition for ministers in Kuwait, Law Journal, Volume 3, Issue 26, Sep. 2003, p. 11.

a mean of casting accountability against the Prime Minister or any one of his ministers regarding a specific subject, in lieu of what is available of information to an inquisitor(1).

In an important Constitutional court decision handed down in 2004, concerning the definition of a parliamentary inquisition, the Constitutional Court of Kuwait had set several principles(2). It stated in its decision that, "even though an inquisition is meant, literally, to seek answers, however, it is not an inquiry. Inquisition is meant to direct criticism to the Prime Minister or one of his ministers or to criticize their policies, in which this tool requires the inquisitor, as member of the National Assembly, to direct his inquisition against the Prime Minister or any one of his ministers, in lieu of behaviors or activities committed. Therefore, inquisition is practically cannot be directed except against the Prime Minister or any one of his ministers."This decision has set the definition of inquisition to mean a supervision tool, but it carries the meaning of accusations against the Prime Minister or one of his ministers, when important information throughout an investigation, public discussion, and answers to questions or gathered in privacy, that casted doubt about the behavior or the conduct of the government. The inquisition is a heavy form of supervision that may lead to the dismissal of ministers from their offices.

2.3.5.2 Legal Inquisition System in Kuwait

The Kuwaiti law did not define the inquisition in clear terms; the Kuwaiti laws had only organized this right and regulated it through the constitutional articles and articles of the standing orders of the National Assembly. The right of inquisition given to the National Assembly is a right to bring the government accountable before the people's representatives in the assembly, as a form of sharing the responsibility of managing, legislating, supervising the affairs of the state(3). Therefore, article 101 of the Constitution had specified this

(1) Asharif, Azizah, ibid, p. 219.

(2) The decision was issued on 9/10/2006, trough ruling no. 8/2004, stating that, the inquisitor is the only that can comment briefly on the replies, and only once.

(3) AlReshediy, Abdullah, H., ibid, p. 331.

by stating that, “every member of the National Assembly has the right to request an inquisition against the Prime Minister or any one of the ministers, in 14 place until the elapse of at least eight days from the day of its request, except in urgent matters, with the approval of the minister, and with the consideration of articles 101 and 102 of the Constitution, the inquisition may take place earlier. The matter of the inquisition may lead to requesting the assembly to vote on the confidence in the minister.”The idea here is that, with an inquisition, there is an attack, so the minister is given the right to defend himself, and a timeframe is given to him to get prepared for defense. The consequences of that attack is stated in Article 101 of the Constitution that, “every minister shall be responsible before the National Assembly for the affairs of their ministries, and should the National Assembly passes a vote of no-confidence against a minister, he shall then be considered to have resigned his office as from the date of the no-confidence vote, and shall immediately submit his formal resignation. The vote of no confidence in a minister may not be raised except upon his request or upon a demand signed by ten members of the assembly, following a debate on an inquisition addressed to him. The assembly may not pass a decision upon such a request, before an elapse of seven days from the date of the presentation thereof.” In addition to these constitutional specifications, articles 133 through 145 of the standing orders of the National Assembly had addressed in details the rules of lodging an inquisition against a member of the government.

The Constitutional court in Kuwait had handed down important decisions on the conditions and parameters of practicing the right of inquisition, putting an interpretation to articles 100 and 101 of the Constitution. The decisions came about as the result of the government asking the Constitutional court, in 2004, to set the conditions and boundaries on using this right, as the government had faced increasing pressure from members of the parliament, due to their frequent use of this dangerous tool against its ministers, and the misuse of this right. In that year, two members of the parliament had requested inquisitions against the Minister of Finance on his supervision responsibility of the

Central Bank of Kuwait[1], and the other one against the Health Minister, due to his responsibility over the ministry of health. Therefore, and in response to the government request for the interpretation of these two articles and in conjunction with articles 130 and 133 of the Constitution, the Constitutional court had handed down its decision number 8/2004, dated 9/10/2006 by stating the followings:

First: "that the subject of the inquisition must be clear, and bounded by events that can be substantiated, so that the targeted party can get prepared to defend himself, and to present his case. In addition, the inquisitor must not involve or add new subjects during the discussion of the inquisition, except for the necessary incidents related to the subject of the inquisition."

Second: "that the inquisition against a minister must be in the domain of his responsibilities, and domain of activities supervised by his ministry, and on the general policy given to him by the Council of Ministers to be executed through his ministry. In addition, the inquisition must be in the domain of the authority available to him by law, to direct and supervise the independent public authorities, institutions, and public departments, belonged or attached to his office, to execute the general policy of the government. In general, the inquisition must be contained by the amount of power given to the minister by laws, under his ability and authority, and that he can master and execute, in relation to the subject of the lodged inquisition. Furthermore, the inquisition must not target pervious actions or activities done by previous ministers, presided over his current ministry, whenever these actions are no longer continuing in his reign of responsibility."

This important decision had strictly defined the inquisition, so that a minister can prepare his case and present his own counter facts and figures to the assembly, on the matters related to his responsibilities

(1) The inquisition requested against the minister involved several points: 1) mishandling of the minister›s duty given to him by law no. 105/1980 toward the country›s real estate properties, 2) the minister double standards in his behavior and his public statements, 3) the minister double standard in dealing with a 100 million Kuwaiti Dinars deposited at the Central Bank of Kuwait, 4) the allowance of a private company to levy fees from car owners and drivers interring the country from Abdally›s land port.

and duties. In addition, the inquisitor must not bring other information or incidents of another subject to be involved into the ongoing inquisition, since that can catch the minister unprepared, and make him unable to defend his position in the eyes of the assembly. This part of the decision is in fact in response to the misuse of the inquisition by some members of the National Assembly, in which hiding some information away from the minister's attention and after an inquisition had started, they then bring them up in a surprise action, for the purpose of scoring some political points against the minister.

Another important part of the decision that came out in the second part of the decision is that the domain of responsibility of the minister must not exceed the authority available to him by law, to direct and supervise the independent public authorities, institutions, and public departments, belonged or attached to his office, when faced with an inquisition. Should the minister have limited authorities over a public institution, he should have minimum responsibility, when faced with an inquisition, and vice versa.

In another decision of the Constitutional court, when requested by the government in 2011 to explain the meaning of articles 100, 123, and 127 of the Constitution, and based on an inquisition lodged by a member of the parliament against the Prime Minister. That inquisition involved previous subjects of actions taken in by previous governmental administration, before that current Prime Minister took office. Therefore, the Constitutional court responded by stating that, "every inquisition requested against the Prime Minister must be confined to the particular responsibility of the general policy of the government, without exceeding that to involve executive actions taken by ministries or actions taken by a minister in his ministry and that general policy is existed and continuing"[1]. This decision has added more clarification to the use of the right of the inquisition, when used against the Prime Minister, and defined its boundaries.

(1) Ruling no. 10/2011, dated 20/10/2011.

2.5 Inquisitions Practiced in Kuwait Against a Minister Supervising Public Authorities

The tool of inquisition against the government is a formidable mean of supervision, and when misused it could prove disruptive to the democratic process of the government. In practical terms members of National Assemble of Kuwait have used this mean quite often, pointing accusation at ministers, mostly, for political reasons and not for what it was intended for as a general supervision mechanism to see over the activities of the government(1).

To show the way inquisitions were practiced in the National Assembly of Kuwait two examples will be viewed, one on a public authorities having wider ministerial supervision reaching hierarchical authority, and the other one with lesser supervision authorities. The first one is related to Kuwait University and the Public Authority for Applied Education and Training, where both are authorities supervised by the minister of higher education, at the time of inquisition was then Dr. Naif Alhagraf. The inquisition was requested by the assembly member Mr. Saleh Ashour on December 19, 2013 lodging inquiries in four sections, two related to the minister's conducts of responsibilities on these two authorities, and the other two related to his own ministry. The discussion in this part of the section will be focused on the inquisition related to the minister's responsibility for the two public authorities targeted in the inquisition.

The first part of the inquisition targeted the appointment of faculty staff members at Kuwait University. The inquisitor contended that the minister was the head of University Council and has the authority to issue decisions of appointments for faculty staff members at the university, and since the university is refusing to appoint qualified Kuwaiti as staff members of the university, therefore the minister is responsible(2).

(1) A total number of 78 inquisitions were mounted against the government since 1960, after the independence, until Jan. 2015, 10 of which were directed against ministers supervising public authorities and institutions, as shown in table 3.

(2) According to the law of establishing Kuwait University, law no. 29/1966, the university has an independent personality status, supervised by the Minister of Higher Education. Article 13 of the law stated that, the higher education council is formed by a decision from the Higher Education Minister, comprising of: The Minister of -Higher=

In addition, the inquisitor had contended that the promotion of faculty members at the university had been handled with misconducts and had been personalized, and since the minister is the head of the council of the university then he was responsible.

The second part of the inquisition was pointed at the conducts of the Public Authority for Applied Education and Training, where the inquisitor had accused the minister of gross misappropriation of monies and endangering the safety of students at the construction site of the Shuwiakh campus grounds. These incidents mentioned in this inquisition were all small, that happens too often during the management process, and the minister had no knowledge of or had a hand in causing them, direct or indirect, however, that showed the political side of the dealings in the parliament, where the inquisitor was eyeing his constituents with this kind of an inquisition.

Consequent to placing this inquisition, the Minister of Higher Education Dr. Naief Alhagraf had submitted his resignation, and on January 7, 2014, the speaker of the parliament declared that the inquisition request was omitted from the agenda of the National Assembly, due to the minister's resignation.

It was clear from law 29/1966 regulating Kuwait University that the minister is the presiding supervisory authority over the council of the university, and has the power to appoint the rector of the university and six members of the council; therefore he is directly responsible for all of the decisions coming out of the university, so declared a law expert(1). This expert see it that the university is part of the ministry of higher education, follows the minister's general directives and guidance, and follows the state general policies, therefore the decisions issued by the

=Education head of the council, University Rector, General Secretary of the university, General Secretary of ministry of education, deans of the colleges of the university, three experienced personalities from the government sector, and three experienced personalities from the private sector, where the last two groups are to be selected by the minister for a term of two years, renewable. The General Secretary of the university shall be the secretary of the council.

(1) Alhmoud, Ibraheem, Constitutional limits to the responsibility of the minister for public institutions, Law journal, Volume 24 issue 1, March 2000, p.260.

university are his responsibility. Other group of experts[1] sees it differently, stating that the council of higher education comprises of 31 members, the minister, the rector of the university, the general secretary of the university, general secretary of the ministry of education, and the deans of the colleges, all serving under their own position's capacities, and six outside members in addition to none voting vice rectors of the university, therefore, the minister cannot control the decisions of the council. They added that the minister has the authority to appoint the rector of the university and six members of the council, while the deans are appointed by the rector and the rest are members of the council under their position's capacity, as specified by the law, therefore, there exited a problem with hierarchical responsibility in this case.

It is clear from this debate that, the basic governing law of Kuwait University had given the authority of management to the university's council without the right of the minister to approve the decisions taken by the council, or the right of the minister to object to these decisions. The minister has some role to play, by appointing some members of the council, pointing out the general policies of the state, and some influence on budgetary allocation through the Council of Ministers, but cannot stop decisions, dictate his will over the university council, or interfere with the daily academic matters of the university. In this inquisition the roles of the minister, particularly the general policies of the university, was not at question, but rather some academic matters that were entrusted to the academic faculty of the university. This is another clear example of political dealings in the National Assembly of Kuwait, where the law was clear, nevertheless, the inquisitor opted for taking the minister for an inquisition even though there were no misconducts committed on the part of the minister, nor there were any terms of the law broken.

The second example of the way the inquisitions were conducted in the parliament that involved authorities having low level of governmental supervision was the inquisition introduced by assembly member Mr. A. Alturaqii targeting the Public Authority for Industry (PAI) and the Capital Market Authority (CMA), and against the minister

(1) Altabtabei, Adel, Constitutional limits to the responsibility of the minister for public institutions, Law journal, Volume 24 issue 1, March 2000, p280.

of commerce and industry Dr. A. Almadaage. The inquisition introduced in 2014, inquiring about the business dealings of both of these authorities(1). These two authorities are independent and having legal personality status; however, they differ in the way they handle their own management and financial matters that were given to them by the laws. PAI was subjected to direct ministerial supervision, which includes management and financial supervision, while CMA was subjected to a limited supervision by the minister, leaving the management and financial matters to the council of the commissioners as legislated by its special law.

The inquisition contained four parts: a) failure to safeguard public interests in the PAI, b) misconducts in the works of the ministry, c) gross mismanagement in the CMA, which led to fall of the stock market, and the breakage of the law by the CMA, and finally c) the complicity of mismanagement and criminal acts. The first part of the inquisition was launched based on the reports by the Audit Bureau issued in 2013 specifying misconducts in spending the budget of the Public Authority of Industry, pointing violation of governmental budgetary rules and regulations stated in the law, rendering the minister as responsible for breaching the laws.

While the third part of the inquisition had concentrated on the Capital Market Authority,and was based on article 2 of the law of the CMA that stated that, “a public authority with legal independent status shall be established and shall be called the Capital Market Authority, and shall be supervised by the Minister of Industry and Commerce”, and based on the law decree no. 116 of 92 regulating public authorities, and article 133 of the Constitution.

The inquisitor contended that gross misconducts had been committed by the council of the commissioners under the minister's knowledge and supervision, which had led to the failure of the stock market. Specifically, the violations of misconducts that followed the establishment of the Kuwait Stock Market Company, under the supervision of

(1) Article 27 of the law 56/1996 regulating the Public Authority for Industry stated that, a public authority called the Public Authority for Industry shall be established with an independent personality status, and shall be supervised by the Minister of Commerce and Industry.

the CMA, and the minister's breach of the laws by refusing to allow the National Assembly to review the CPA's budgets for four consecutive years. Finally, the misconducts that was associated with staff appointments in the CPA.

It is clear from the points that were raised by the inquisitor, particularly the points regarding the CPA that the special law of the authority passed by the same National Assembly had greatly limited the supervisory authority of the minister, due to the economic nature of business conducted by the Authority, as discussed above in Chapter I. The Authority's law no. 7 of 2010, article 17, has given the council of the commissioners the full authorities to appoint staff and personel with an exemption from the Civil Service Bureau regulations, in addition, the law has given the authority the full financial independence without any ministerial involvements. Therefore, the minister's responsibility concerning these points that were raised by the inquisitor was not valid according to that law. Accordingly, the National Assembly had renewed confidence in the minister after the elapse of the inquisition, with some recommendations to the government.

2.6 Invoking Political Responsibility (vote of no-confidence)

According to the Constitution articles 58, and 101, the Kuwait government is politically responsible before both, His Highness the Amir, and the National Assembly. Article 58 starts by stating that, "the Prime Minister and ministers are collectively responsible before His Highness the Amir for the general policy of the government…", while article 101 begins with: "every minister shall be responsible before the National Assembly for the affairs of their ministries…" Therefore, the government has two branches of political accountabilities, before His Highness the Amir and before the National Assembly for the general policies and the works and activities of the ministries.

2.6.1 Political Responsibility before the National Assembly

Political responsibility to the National Assembly involves placing the government on the stand before the assembly, to answer the accusation directed to it by a member of the National Assembly, for alleged misconducts. This form of political accountability is the basis of parliamentary operations, and is directed at the Prime Minister or any one

of his ministers in the area of their respective responsibilities, based on the principle stating that, where there is an authority there must be accountability(1).

Political responsibility, in general, is a personal accountability directed against a minister, which may lead to his dismissal from his office, and does not involve the rest of the ministers or the whole Council of Ministers. However, the Kuwaiti constitution have taken the course of individual accountability when a political responsibility is practiced against the government, as that is evident from article 101 of the Constitution. This individual accountability is meant to supervise works of ministries, public authorities, and institutions supervised by individual ministers. In these laws, the general accountability against the whole of the government was not part of them; however, these laws took a different course of placing accountability on the whole of the government, which can lead to the same outcome of holding the whole government accountable. This course of accountability against the government is specified in article 102 of the Constitution, regarding the inability to cooperate with the Prime Minister. In that case, when the National Assembly passes a vote of inability to cooperate, then government, with whole of its members must present their resignation to His Highness the Amir(2).

Invoking political responsibility against a member of the government must only be practiced after launching a successful inquisition. Therefore, presenting an inquisition is a prerequisite to practice political responsibility against a minister, leading to a vote of no confidence(3). To reach this final step of the vote of no-confidence, the assembly must follow the constitutional steps outlined in article 101, stating that, “should the national assembly passes a vote of no-confidence against a minister, he shall then be considered to have resigned his office as from the date of the no-confidence vote, and shall immediately submit his formal resignation. The vote of no confidence in a minister may not be raised except upon his request or upon a demand signed by ten members of the assembly, following a successful vote on an inquisition addressed to him. The assembly may not pass a decision upon such a request, before an elapse of seven days from the date of the presentation thereof.

(1) Altabtabei, Adel, ibid, p. 944.

(2) Altabtabei, Adel, ibid, p. 945.

(3) Alsharif, Azizah, Ministerial Inquisition, Law journal, Vol. 25, issue 2, June2001, p. 9.

The vote of no confidence shall only be passed by the majority of the members of the assembly, without the participation of the ministers in the voting".

This Constitution article outlined the steps that must be followed in order to bring the political responsibility against a member of the government to a close. Other articles of the standing orders of the National Assembly, particularly articles 143,144 and 145, had also added some more guidelines for practicing this form of accountability. In addition to all of these constitutional guidelines, the Constitutional Court had also ventured into refining this right of bringing political accountability to the government. In its landmark decision number 8/2004 issued on 9/10/2006 in regard to explaining the bounds of articles 100 and 101, the court had decided that, "a minister draws his authority only from the decree of his appointment, and draws his ministerial responsibilities from the decrees originally outlined the activities and responsibilities of the ministry, in addition to the responsibilities given to the minister by other laws and regulations.

The minister is individually accountable for his supervision authorities over his ministry, public authorities and institutions, public departments and offices attached to him or to his ministry, as being the higher hierarchical authority over them all, their employees, department, equipment's, and installations. For that, it is natural that he should be held politically accountable to the National Assembly for violations of constitutional laws or common laws, whether it comes out positive or negative, intended or not intended, as he is subjected to the right of accountability given to the National Assembly, particularly the right of inquisitions." This decision has held the minister accountable for every events, actions and works occurring in his domain of responsibility, whether authorized on not, he knows about them or not.

Inquisition and the following political accountability are heavy means of supervision that could cause members of the government to lose their ministerial posts. Therefore, constitutional articles and parliamentary procedures have several restrictions and checks to ward against misuse. These restriction and guidelines are meant to ward off misconduct or misuse of the inquisition privilege, when used against a member of the government.

2.6.2 Responsibility of the Minister to the Amir

Most parliamentary systems require that ministers are to be accountable before the head of the state. The laws of Kuwait were not different from that and took that same concept to require the ministers and the Prime Minister to be held responsible before the Amir of Kuwait. These requirements are specified in article 56 of the Constitution, stating that, "the Amir appoints a Prime Minister after the routine consultation, and can dismiss him from his office, and appoints ministers upon a recommendation by the Prime Minister, and can dismiss them from their offices…"In addition, article 58 of the Constitution stated that, "the Prime Minister and the ministers are all collectively responsible before the Amir for the general policy of the state, and each minister shall be responsible to him for the works of this ministry.

These constitutional articles have placed another burden of responsibilities on the shoulders of the Prime Minister and each one of the ministers before the Amir, in addition to the already cumbersome burdens upon them towards the National Assembly. Moreover, these articles indicate that the head of the state, the Amir, has wide and unconditional authorities over the government, the Prime Minister, and each minister. These unconditional authorities are not regulated by the Constitution, and consequently they are absolute authorities.

Therefore, the Amir can dismiss the Prime Minister, or any minister, once they loose his trust, due to reason related to conducting of the general policy of the state or to any administrative or behavioral reasons(1). In this state of absolute authorities, the whole of the government, public authorities, institutions, public departments and offices, including the conducts of the Prime Minister, and the ministers, are all under the Amir's continuous direction and supervision.

2.7 The Bounds of the Minister's Political Responsibilities over the Activities of Public Authorities and Institutions

Kuwait constitutional and legislative laws did not address the organization of public authorities and institutions in clear and definitive manner; however, they left it all to the legislative bodies to determine the

(1) Alsharif, Azizah,Constitutional limits of the responsibility of the minister for public institutions, ibid, p. 221.

shapes and scopes of individual public authorities and institutions to fulfill their objectives. This had created unorganized way of establishing these public authorities, resulting in a swing of supervisory authorities from high to low, and something in between, as seen in chapter I. That swing has given ministers total control of the public organization placing them in the executive officer's seat in some instances, and giving lose and distant supervision roles in some other instances. That also had led to the confusion in the minds of the parliamentary procedures when handling the political responsibilities as practiced in the parliament, and as seen from the inquisition requested against minister, where members have questioned matrers that sometimes did not fall in the domain of responsibilities of the ministers, as set by these individual laws.

These Kuwaiti constitutional and legislative laws did not also set bounds or rules of engagement for the responsibilities of the minister over action of these organizations, except that it left it to the individual laws of each public authority to set these bounds. This void in legislation had prompted a question: does the political responsibility of the minister over public authorities involve general supervision guidance?, or should it span all decisions taken by these organizations? In this regard, experts have divided opinions.

On one side of this question, some experts argue it that ministerial administrative supervision over the activities of public authorities is a direct one and follows the same responsibilities ministers bear over the activities of their ministries. While on the other side, other experts say that political responsibilities of the ministers span only the domain of authorities given to them by each individual law of the public authorities and institutions. To further explore these opinions, it is important first to discuss the fundamental basis of the political responsibility of the minister as given in the Kuwait legislative laws.

2.7.1 Basis of Political Responsibility of the Minister over Public Bodies as Given in the Kuwaiti Laws

Kuwait legislative laws did not specifically define the role of the ministers in relation to the public bodies that are serving public interests under their responsibilities. However, these legislative laws only

defined the minister's political responsibility in a mere general context. This generality had given ways to varying opinions, which are summarized in the following:

The Constitutional expert Pro. AlMoqatea wrote that political responsibilities, according to the Kuwaiti laws, are based on the followings:

1. "The organization of public authorities and institutions are regulated generally by the constitutional article no. 133, indicating that the establishment of these public bodies must be done through the law. Therefore, the act of establishment is initiated, legislated, and approved by the parliament; hence, the parliament is the one that has the ultimate authority to determine their bounds of activities, objectives, relationship with the activities of other branches of the government, depth of responsibilities and the supervising ministers. Consequently, the parliament retains the ultimate supervision authority over the action and activities of these public units, particularly the supervision over the financial matters as posed by article 137 of the Constitution. These constitutional articles determined the general bounds and indicated wider responsibilities of the ministers over these public bodies, particularly when ministers violate the norm of better management or violate the parliamentary directives. Therefore, violation of these general constitutional articles poses a ground for invoking political responsibility action against a minister"(1).
2. "The administration of the needs and benefits of the public is entrusted with the government, and executed by the Council of Ministers, as determined by the constitutional article 123, stating that, "the Council of Ministers oversees all of the country's needs, benefits and requirements, plans the general policy of the country, oversees its implementation, and manages the works of the governmental departments". In addition, the administration of the ministries are regulated by article 101 of the Constitution, indicating that the ministers are directly responsible in front of the parliament for the activities of their ministries, and that include the public authorities supervised by them. Furthermore, article 130 of the Constitution stated that, "ministers are to supervise the affairs of their ministries

(1) AlMoqatei, Mohammed, A., Constitutional limits to the responsibility of the minister for public institutions, ibid, p. 240.

and to execute the general policies of the government…", indicating that this supervision includes all affairs of the ministries and all affairs of the public authorities supervised by the ministers. Therefore, these articles determined another set of responsibilities, since if the needs and benefits of the public are mismanaged, or misappropriated through governmental administration, that well pose a ground for invoking political responsibilities against the respective ministers.[1]"

3. "Conflict of interest is regulated by article 131 of the Constitution, preventing ministers from engaging in private dealings or involved in contractual matters, whether private, direct or indirect, through governmental departments or through the public bodies, or any other ways(2), and should a minister involves in such dealings, that should pose a ground for political accountability"(3).

Another expert opinion, in line with the above line of thought, was voiced by Pro. Y. Alassar, stating that article 101 of the Constitution, specifying the responsibility of a minister in front of the national assembly for the activities of his ministry, should be taken in its wider scope and content. The minister, as an owner of administrative supervisory authorities, practicing this authority over the activities and works of central ministry unit, should also include his role as an authoritative supervisor over the activities of the other public units under his domain of responsibilities. In that context, the minister, then should be held accountable for that wider role of supervision. He added that, public authorities are entrusted with functions that were originally part of the objectives of the government, and the government, through legislation,

(1) AlMoqatei, Mohammed, Constitutional limits to the responsibility of the minister for public institutions, ibid, p. 241.

(2) Article 131 stated that, it is not permissible for a minister, during his tenure, to engage or accept another public position or engage in private works, weather industrial, commercial, or financial, direct or indirect. In addition, he must not participate in any governmental contractual dealings, executed by the government or by any public bodies, nor should he participate in the councils of any company as a member. Furthermore, ministers must not buy, or rent governmental properties, direct, indirect or through public auctions, nor shall he participate in selling, renting, or bartering to the government andy of his private monies.

(3) AlMoqatei, Mohammed, Constitutional limits to the responsibility of the minister for public institutions, ibid, p. 242.

sought to decentralize these function to serve the interest of the public, therefore, these functions are still within the responsibilities of the government, and hence ministers are accountable due to their role of supervision(1).

It can be concluded from this debate, and in line with Pro. Alassar's position, that the political responsibilities indicated in the constitutional articles 101and 130 had meant to include the accountability of the ministers for the activities of the public authorities and institutions rendered under their supervision as well as the accountability over their ministries. This accountability could not be overlooked by the constitutional legislator and cannot be regarded as separate responsibilities, one for the ministry and another for the public bodies. However, this accountability must be practiced according to the rules of laws and in line with the principle of accountability must equal to the privileged authority.

2.7.2 The bounds of political responsibilities for an administrative supervising minister in Kuwait

The bounds of the political responsibilities of ministers, due to their supervision over public authorities and institutions in Kuwait, were not clearly defined in the constitutional or the legislative laws. That vagueness of the laws had led to varying opinions between experts, which are summarized in the following:

Dr. Alsharif adds to the earlier discussion that the limits of political responsibility carried by a minister should not exceed the limits laid down by the law. A minister is politically responsible for his specific supervisory role in his ministry, according to the constitutional bounds, but in case of his responsibilities over public bodies, he is only politically responsible for the decisions taken by the persons whom he is directly supervising, and politically accountable should he participated in an inappropriate supervision act taken by them. That is because guided supervision does not prohibit independent persons from taking independent decisions, but on the contrary, it encourages them to take independent courses of action(2).

(1) Alassar, Yousri, Constitutional limits to the responsibility of the minister for public institutions, ibid, p.263-264.

(2) Alsharif, Azizah, ibid, p. 227.

Dr. Alassar added that political responsibility starts with voicing an accusation against a minister, for specific incidents committed in the domain of public authorities, and then it is up to the minister to present his defense in front of the National Assembly. Once these accusations are answered by the minister and showed that he has done all that he could towards these incidents, then it comes to the trust of the members of the parliament in the answers he had presented. Therefore, the basis for political responsibility comes to "trust", which is a discretionally matter for the parliament to take, and the parliament alone has that ownership of this discretionally privilege(1).

Another constitutional expert, Dr. Alfaily, brings his insight into the subject by stating that the basis for political accountability of ministers is that the Constitution had assumed that all public organizations are one public administrative system. Then the legislators, by their own well, chose to separate certain parts of the system away from the hierarchical form of management to have them operate independently in decentralized mode of management.

In the same time, these public authorities are not severed completely from the control of the central government, but bounded by some form of attachment, with ties widen, or narrow, depending on terms of law of each respective public unit. He added that, the Constitution did not distinguish much between the supervisory role of a minister over his ministry and his supervision role over the public bodies, and did not indicate the type of management to be followed, hierarchical or otherwise, as obvious from articles 130 and 133.

Hierarchical authority is a principle practiced through administrative law in case of ministerial administration, however, the Constitution moved between two extremes about public authorities. One extreme is specified by article 133, ensuring the independence of public bodies away from the control of the central government, and the other extreme is indicated by article 101 ensuring some form of supervision attachment to the central government. Therefore, he added, the bounds of responsibilities of a minister over the action of public authorities are determined by the legislators themselves, once they chose to separate some function from the domain of the central government. Conse-

(1) Alassar, Yousri, ibid, p. 268.

quently, ministers cannot be held politically accountable by the parliament for actions taken by public authorities without giving them suitable tools for required administrative supervision, except that if they violate any terms of the laws, then they could be held accountable. As matter of fact, ministers can be held politically responsible, if they extend their supervision role behind and over what have been prescribed to them by the laws that govern these public bodies.

In line with the above arguments, the Constitutional court, in its decision issued on April 11th, 2005, and in response to a governmental inquiry to interpret article 99 of the Constitution, stated that, "constitutional principles dictate that the level of authority brings along with it the same level of responsibility, so those who practice authority must assume its responsibility. Therefore, accountability must be placed on whomever had the specialty and authority given to him by the law, and able to practice these specialty and authority to take action, consequently, there must not be responsibility without specialty or authority"(1).

The Constitutional court decision, also explained what it meant by 'specialty', stating that constitutional specialty for a minister consists of four elements, "that a minister is appointed by a decree according to article 56 of the Constitution (personal element), that the actions and incidents of accountability are due to his decision or the decisions taken by persons under his supervision during his tenure (time element), that a minister is able to extend his authority, as a hierarchical authority, over the activities and works of his ministry and his subordinates, as mandated by decree of ministerial establishment (place element), and that the incidents of accountability are within the bounds of the law (subject element).

This decision is quite an important one, since it put the expert's arguments to reset, and clearly indicated a natural principle of justice, that one cannot be judged for the misdeed of another. In this decision, the court outlined the responsibilities of ministers in front of the National Assembly, that ministers cannot be held responsible except by the level of authority prescribed to them by law, that the assembly, itself, had recognized and passed. The decision continued by adding

(1) Court decision 3/2004, issued 11/4/2004.

that, not only that the authority must be available to the minister, but that a minister must also be able to practice it, setting another natural principle of justice. Authority without ability to practice is just having no authority at all. With this Constitutional court decision in mind, then every member of the National Assemble and every minister should abide by it, and takes it as the final words on the subject of responsibilities of a minister over the works of public authorities, but it turned out that that was not the case. As this court's decision was passed in 2005, a member of the National Assembly, Mr. Alturagii, in 2014, brought up an inquisition against the Minister of Commerce and Industry Dr. Almadaage, questioning the activities of the Capital Markets Authority, in which the minister had very limited authority upon!

It can be concluded from the above arguments and court decision that, political accountability of a minister over actions and decisions taken by public authorities, and independent departments belong to his office, or attached to his ministry, and under his supervision, is dependent on the level of authorities given to him by the law. Article 133 of the Constitution stated clearly that, public authorities are to be independent away from the control of the central government, to manage their own business, and issue their own decisions, however, that does not mean complete independence, but must have some sort of attachment to the central government by ways and means to be determined by the laws.

These ways and means of supervision come wide and narrow, depending on the will of the legislator, and the determined objectives for these public authorities, as was seen with the examples of public bodies in chapter II. Additionally, the bounds of political responsibilities depend on the "trust" that the parliament can bestow on a minister, once he presented his arguments, regardless of any violations taken under his supervision, and depend on the course of action taken by the parliament to inflect political responsibility on a minister, either, to take the course of wider responsibilities or narrower accountabilities.

Conclusion

Installing public authorities in a state is an essential tool of decentralized form of governance that could span the social, cultural, economic, political, and all other forms of business and ventures of the state. This practice of installing these public authorities allows citizen to participate in sharing the responsibility of managing the affairs of their own country, and help strengthen the democratic processes. In effect, practicing democracy without decentralized form of government is a hollow concept, if it is practiced without establishing public authorities that involve sharing of decisions and responsibilities along with the government. In matter of fact, public units can serve the citizen flexibly and better, since they can provide services and goods qualitatively and efficiently than does a centralized and detached form of centralized administration. However, these public authorities, should they be established in a superficial state of independence, as if they were another branch of the government, then that can have an adverse effect on the service that these authorities deliver to the public, and would not lessen the burdens or the workloads on the presiding ministers. That in effect is having no public operating authority in reality.

From an ideal point of view, publicly established units should be independent from most strings of control of the central government, i.e., the regulations of Civil Service Bureau, prior auditing of the Bureau of Audit, procedures of the Tendering Committee, and the direct instruction of the presiding minister, and the Council of Ministers. Rather than resort to these means of control, these public units should be ideally monitored in a supervisory role as inscribed by the laws and the general constitutional articles, to ensure their independence, article 133 of the Constitution. That independence should include the freedom to organize internally, and freedom to spend and collect levies, according to simple and clear prorisions of law. In this law, these units should be able to facilitate obtaining and granting loans, charging fees, and paying fees, as some part of the dealings of total financial behavior, as allowed by the constitutional articles 133, 137, and 157. These would be the privileges given to these independently established units. On the other side of the responsibilities, these units would be supervised

(verses controlled) through a yearly evaluation, an afterward audit, and through the annual budget allocation, as the first measure of supervision. Should these units fail to fulfill their given objectives, or misappropriate their money, then, there should be a budget adjustment accordingly. This kind of accountability would give the public authorities the independence that they need, without continuous governmental intervention, and gives the central government the supervision role it needs, without the added burden and responsibilities of direct control. This is in essence striking an equal balance between the privileges and the responsibilities, for the benefit of both, the supervisee and the supervisor.

Another form of supervision at the disposal of the central government, for this ideal public unit, is the power of appointment of the higher responsible figures over the boards of directors of these public authorities, in accordance with a simple clear management structure, given in a law. This also would add another level of supervision over the kind of professionalism and competency of the person whom would be entrusted with the management of these public units. In that appointment, the central government would have placed a figure that, itself has chosen and placed in him its trust and confidence, of the same level of trust given to a minister or any other governmental officials. With this kind of power to appoint, the government has the privilege of reappointment at any time that it sees fit, even without waiting to the end of terms, which adds another tool of supervision at its arsenal. With that, the government can rest confident in the management of the public units that are intended to serve the public, without veering away from their set objectives.

A third and final form of guided supervision, is the right of the government, along with the rights of members of the national assembly, and any other individual citizen to take these public authorities to courts. The government or others can seek to force these public units to adhere to the objectives set forth in their respective laws, or even can seek civil and criminal proceedings against these units or against the officials responsible over these public units. In this form of supervision, justice is sought for misconducts, should there be any, and dealt

with fairly, justly and after approved formal proceedings, doing away, or lessening the inquisition proceedings against ministers, that is often used for political gains in the national assembly, saving time, and energy.

Supervision, guidance,control, and independence,are four essential concepts that are in need of clarification, understanding and legislation into law, so that when an inquisition is invoked in the national assembly against a minister, it becomes clear to everyone involved and which responsibilities a minister can carry. Roles and responsibilities of a minister are various, under Kuwaiti laws, and can take the form of a supervisor, a guide, or a controller over the activities of assigned public authority. In addition, clarification of the rights, privileges, and responsibilities of the public units are in need to be put clearly into a general law to maintain that independence status requested by the constitutional article 133.

The concepts of these terms are clearly meant differently in the minds of both the Government and the members of the National Assembly, judging from the diverse schemes of responsibilities and privileges of passed laws of each of the public units, and the inquisitions lodged against ministers. The constitutional article 133 clearly specifies that, "the law shall organize public authorities and public bodies of municipalities in a manner to ensure their independence under the guidance and supervision of the government."This independence should include total financial behavior as guaranteed by articles 137, and 157, and should follow a total independence of the management behavior as fundamental privileges.

That is in contrast to the concept adopted in most of the laws establishing these public units. It seemes that a guided supervision indicated in article 133 of the Constitution is confused with the concept of control. In this constitutional article, the term guidance meant for the government to set the objectives of these units in a law, and ensure that these pubic units reach these objectives, guiding them by using legal means, should they veer away from these objectives. That clearly does not include the control of behaviors, or the control of decisions issued by these publicly established units, and certainly guided su-

pervision does not mean the control over each activity of these public units. Tools of control over the behavior of members of these units, and control over the activities of these units, as practiced in Kuwait, include the issuance of directives, request of meetings, reprimanding, dissolution of councils and board of directors, approval, alteration and nullification of decisions, and subrogation, are all tools of interventions and control that undermine the independence of these public units, as that independence status was not maintained. Should that kind of control be the understandings of guided supervision, as of the intention of law 116/92, in particular article 3, and law 31/1978, these public units would then be structures of no independence and would be considered as just another branches of the government. In that form of control, a full responsibility, indeed, is placed over the shoulders of the presiding ministers, regardless of the customary article injected in their laws describing them as independent public authorities. Unfortunately, this form of control strips public authority from their independent personalities, and undermines the intended independence guaranteed to them by the Constitution.

Another misconception that is in need of clarification is the governmental responsibility over the activities carried out by ministries and public authorities in front of the National Assembly. Article 101 of the Constitution specified that responsibility by stating that, "the minister shall be responsible to the national assembly over the affairs of his ministry and should the national assembly passes a vote of no-confidence against a minister, he shall then be considered to have resigned his office as from the date of the no-confidence vote, and shall immediately submit his formal resignation….". In that article the targeted responsibility of the minister is for the ministry's affairs, stated in very specific term, and not for public authorities. Should that be the case, i.e. including the responsibility over public authorities, by way of the minister's guided supervision, then that would have been specified in that article, or another, and that would render these public authorities as non-independent entities.

Consequently, these public authorities would be controlled by the same mechanisms and levels of control as of the ministries', which

then would be contradictory to the independence sought of and guaranteed by article 133 of the Constitution. Additionally, the "political responsibility" of the minister, that is a concept often used for placing the burdens of responsibilities over the shoulders of ministers due to actions and activities taken by their ministries, and of activities taken by public authorities by way of their guided supervision, using article 101 of the Constitution, is grossly overused, and in many instances is misused. Often this concept is used in the parliament debates to mean, mostly, that any actions and works taken by these governmental and public units are the sole responsibility of the ministers, regardless of the parameter of authorities they possessed over these public units, and in many other instances used for political advantages, or against a particular minister. Therefore, this term of political responsibilities should be defined clearly in a law, along with other misconceived concepts regarding the public authorities.

The legislation of "authoritative control" over publicly established bodies is easily done through laws, however, the responsibilities that goes along with it is troubling to the concerned ministers. The limiting number of ministers that must not exceed sixteen, including the prime minister, as legislated by the Constitution article 56, and the responsibilities to supervise the works and activities of ministries, and the added offices and departments attached directly to their offices, leave no time or efforts for those ministers to concentrate on any other activities. On top of that, a minister must supervise more than one ministry, as there are 22 of them, with only 15 ministers available to go around. That leaves the efforts to supervise (let alone control) more additional 32 of public institutions and authorities, added to the ministers' responsibility plate, impractical and inefficient.

That is one of the reasons that the constitutional articles had stressed the independence of these authorities, away from the direct control of the government. In this respect, it is advantageous to the ministers and the government to relieve themselves from such added responsibilities by way of cutting loses some of the authorities of service nature into the public domain. In this scheme, public units can be formed by electing board of directors directly, to serve the interest of

the public themselves, without the intervention of the government or the parliament, providing that these public units can levy their money from the public. The provision to provide their own financial sources, independent form the government, is a sure mean of guarding against interferences of the government or the parliament.

It can be concluded from the above that, in order to justify the privileges given to a public authority on one hand, and the responsibilities of guided supervision to be carried out by a minister, on the other hand, a new law to replace law 116/92 must be introduced, to specify in clear terms,so that the responsibilities and authorities of a minister can be justly checked and balanced in accordance with commonly recognized terms of reference as follows:

a) The concept of guided supervision, its intention, parameter, and scope as outlined in the constitutional article 133.

b) The concept of guidance, its scope verses control, and tools.

c) The concept of control, scope, and tools to be used over the public units.

d) The concept of ensured independence as outlined in article 133 of the Constitution, and the mechanisms for safeguarding against the encroachment of legislated tools and amended regulations.

e) The constitutional responsibilities of ministers, in accordance with article 101, and with the high court decision no. 8/2004, regarding authorities of ministers verses the independent administration of public bodies.

f) The concept of political responsibilities, its scope, tools, and its perimeter.

The existing laws concerning public authorities in Kuwait, the way it stand today, however, clearly define the authorities and responsibilities of the ministers over the activities of public bodies and level of these given authorities. It is clear from the schemes of passed laws, pertaining to public authorities, that no common guiding rules or systems have been put in place to govern uniformly the authorities and responsibilities of the government. Where the authorities of ministers are various, stretching from high to low, and in something in between.

Therefore, it can be concluded form that the responsibilities of the ministers must be in line with level of these authorities, as explained by the Constitutional Court decision 8/2004. However, to be justly fair to the ministers, and in lieu of his tremendous loads these ministers bear, these responsibilities should be shared by the heads of these public authorities. In a closely controlled public unit, i.e., the Kuwait Petroleum Corporation, and due to the wide authoritieslegislated to the minister, the responsibility must then be borne by the minister completely and alone. On the other hand, it would not be fair and just to the minister to carry out the burden of decisions made by the board of directors where the law gives the minister no part of or role in making these decisions, i.e., the Capital Market Authority, and the Central Bank of Kuwait. The shared responsibility scheme proposed here is to allow the president heads of the boards of authorities to share the podium with the minister over these decisions, should there be an inquisition in the national assembly regarding the consequences of these decisions. Should the inquiries bring wrong doings on the part of responsibilities of either, then the parliament members would have the choice of invoking the no confidence in the minister, which then he would resign, or the choice of placing a recommendation of dismissal of the heads of the boards, should they be at fault over their end of the responsibility.

Recommendations by the parliament are not compulsory to implement by the government, however in that event, of not implementing this kind of recommendation of dismissal of responsible persons of the public units, once a misconduct is revealed through this shared responsibility, then it becomes the responsibility of the minister, which then the national assembly would have the right to come again and invoke a non-confidence in him. That is because the government had saved the authority of appointment of the heads of these authorities to itself in all of the passed laws of these public authorities.

Political inquisitions in Kuwait are run according to the constitutional article 100 stipulating that, “every member of the parliament has the right to direct questions or inquiries to the ministers or to the Prime Minister …”. That right of inquisition had been given to a member of parliament, alone, against the Prime Minister or any of his ministers, without any bounds or any kind of restrictions, which quite often is misused and abused against

the government for political gains. Comparing that right with the right of the national assembly to request a discussion on any subject matter of concern, through article 112 of the Constitution, which indicated that, "It is permissible for five member of the parliament to request discussion on a general subject on the parliament floor …". Through this article, and when the discussion of a general subject is concluded, the most that can be achieved is recommendations to the government, of which is not compulsory to implement. Therefore, the Constitution requested five members to start a discussion on a subject that my lead to recommendations, while in the same time it allowed only one member of the National Assembly, and alone, the power to start an inquisition against the Prime Minister or any other ministers of the government, which at the end may lead to the collapse of the government! It seems fair and justice to allow the same number of the members of the parliament to start an inquisition, as well, since the impact of such proceeding may lead to the collapse of the whole government. Should the Constitution have requested more members to lodge an inquisition, the personal, and the individual political gains that is often the reasons for lodging such inquisitions would have been taken out of the these inquisitions, or taken out of the threats of placing inquisitions against ministers.

Amending the Constitution of Kuwait to account for these unbalanced functions is unlikely, due to the complicated procedural path required to be undertaken for such a step, and since it has never been attempted due to this complication. Therefore, it is recommended, instead, to contain inquisition through amending the National Assembly's standing orders, to require at least five members of the National Assembly to start an inquisition, so that these inquiries can be requested on merits. Should that also prove to be difficult to achieve, since it is hard for the parliament to let go of this gained formidable tool, then at least an independent standing committee comprising of constitutional experts must be formed. This independent committee, formed apart from either the parliament or the government, should have the function to guard against lodging inquisitions for personal agendas and the function of pointing out the unconstitutional aspects of each requested inquisition.

In the final analysis, it seems that the question of the amount of responsibilities to bear by ministers over works and activities of public bodies, as actually practiced through the laws in Kuwait, is an academic one. From these laws, the legislated authorities for ministers are of complete control. These authorities are divided into complete authoritative control of 23 public units and some authorities over the rest of the nine public units of the total 32 public units active in Kuwait. Therefore, the responsibilities of the government are total, complete and along with these wide powers of control, hence they must bear these legislated authorities in front of the National Assembly. In this kind of governance, public units were formed as if they were other structural departments of ministries, therefore, decentralization was not practiced, public authorities were not independent, and multitudes of governmental structures, burdens, and costs were added, with little benefits.

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