

## A Qualitative Study of the Separation of Powers in the Criminal Justice System of Kuwait

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### Abstract

The present article considers the separation of powers (SOP) in the criminal justice system of Kuwait. The topic is underrepresented in literature, which may be partially attributed to the fact that SOP in criminal justice is not very extensively studied; instead, administrative SOP is usually reviewed. Furthermore, the investigation of the literature devoted to Kuwaiti criminal justice system also reveals the lack of sufficient coverage. Still, some evidence indicates that in Kuwait, executive bodies have notable power over the criminal justice system of the country. This issue, along with the gaps identified in the literature, prompts the present investigation. The article employs a qualitative methodology to gain insights into the topic. In particular, the literature review is used to identify the areas of interest, as well as gaps in the literature, and interviews are employed to fill the gaps and provide additional details and information. The interviews engaged specialists, including the representatives of the three branch of power, as well as lawyers and academics, and prompted them to consider the topic of SOP in Kuwait, especially in the criminal justice system, as well as its strengths, weaknesses, and plans for improvement. The results indicate that the issue of the excessive power of the executive bodies over the criminal justice of the country is not only present; it also causes significant problems and, according to the participants, needs to be eliminated to ensure the protection of human rights. Additional topics like the potential safeguards and alternatives to SOP that can ensure the protection of human rights were also considered. As one of the very few studies that review Kuwaiti criminal justice and SOP, the present article contributes important data on both topics.

**Keywords:** criminal justice system, separation of powers, law.

### Introduction

The Separation of Powers (SOP) is a major mechanism for the protection of human rights.<sup>1</sup> According to Barkow, who has provided a framework for the present study, SOP in criminal justice is particularly important because it prevents power abuse, which is especially dangerous for citizens in such settings.<sup>2</sup> However, Barkow also observes that the topic of criminal-matters SOP is noticeably understudied when compared to the administrative-matters SOP.<sup>3</sup> Additional research indicates that Kuwaiti criminal justice system is not very well-researched either. Furthermore, the literature that is present points out potential issues that are worth investigating.<sup>4</sup>

First, it can be concluded that Kuwait employs its Constitution to declare the significance of SOP and guarantee it along with human rights.<sup>5</sup> However, the cases in which SOP is not adhered to in Kuwait are also reported. For example, the Constitution itself specifies that the Ministers (representatives of the executive power) are also a part of the country's legislative body.<sup>6</sup> On the other hand, certain legislation (in particular, the Decree Law No. 23 of 1990)<sup>7</sup> can be viewed as unconstitutional because it directly limits the power of the judiciary, transferring it to the executive bodies. Police and

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<sup>1</sup> David Samuels, 'Separation of Powers' in C Boix and SC Stokes (eds), *The Oxford Handbook of Comparative Politics* (OUP 2009) 703, 706.

<sup>2</sup> Rachel Barkow, 'Separation of Powers and the Criminal Law' (2006) 58 *Stanford Law Review* 989, 993.

<sup>3</sup> *Ibid.* 989.

<sup>4</sup> John Morison and Brian Grimshaw, *Investigation, Process and Legal Standards within the Criminal Justice System in Kuwait* (Queen's University Belfast, 2016) at 3.

<sup>5</sup> Constitution of Kuwait, 1962, art. 50

<sup>6</sup> *Ibid.* art. 56, 80.

<sup>7</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

prosecutors do not have an effective SOP in Kuwait either.<sup>1</sup> Thus, there is some evidence to SOP-related problems in Kuwaiti criminal justice system, even though it does not receive extensive coverage in modern research.

Other issues related to the criminal justice of Kuwait are also reported by studies, including the lack of significant elements (for instance, relevant procedures for political cases<sup>2</sup> or guidance for crime investigation), bureaucracy, unclear roles and responsibilities, resource shortages, and the excessive presence of foreign judges.<sup>3</sup> In general, however, the topic is represented by very few sources, and none of them focuses on the impact that SOP can have on the mentioned problems.

Another topic that receives at least some coverage is the origins of Kuwaiti legislation. The latter has been influenced by several factors, including that of the British Jurisdiction, with which Kuwait had entered an Anglo-Kuwaiti Treaty. As a result, Kuwait had two independent jurisdictions between 1925 and 1961,<sup>4</sup> and the British jurisdiction was apparently the dominant one.<sup>5</sup> However, Kuwait's independence was proclaimed in 1961, and the British legislation was abandoned. Instead, a new system, which was influenced by the French and Egyptian law, as well as the Islamic law, was developed.<sup>6</sup> A literature review demonstrates that this diffusion of the law could result in negative effects (for instance, in adopting the flaws of the French law),<sup>7</sup> but no positive ones were reported. Also, the literature review failed to find the sources that would consider the impact of the origins of Kuwaiti legislation on SOP in the judiciary.

In summary, a study of the sources on the topics of Kuwaiti SOP and its criminal justice system indicates the presence of some issues, but they are not very extensively examined. At the same time, the literature review also demonstrates the significance of the research on the topic, which is specified by the particular circumstances that make power abuse in the criminal justice system especially damaging. Consequently, a study of the SOP in Kuwaiti criminal justice system would be both original and valuable as it focuses on notable literature gaps and contributes the data can help to develop solutions to the identified issues.

Based on these assumptions, the present article put forth the following research question: how effectively does SOP in the criminal justice system of Kuwait, which is rooted in the country's Constitution and demonstrates the impacts of several law systems, contribute to protecting the rights of citizens, and what can be done to ensure this protection? In order to respond to this question, an appropriate methodology was developed.

## Methodology

The presented study employs qualitative methodology because the latter is capable of exploring the evidence related to the topic and providing insights into it.<sup>8</sup> The postpositivist perspective was adopted to guide the research; its philosophy supports qualitative methods and postulates that knowledge can be constructed based on evidence, which includes qualitative data.<sup>9</sup> The first part of the work involved the review of primary and secondary sources on the topic, which helped to contextualise the study and identify the gaps in the literature. Apart from that, it was used to develop the criteria of SOP which were then employed for interviews.

Individual semi-structured interviews with 25 people (see Appendix A) were carried out to retrieve the data based on the experiences and expertise of the participants. The choice of the type of interview is explained by the fact that semi-structured interviews find a balance between ensuring the structure of the process (to cover the necessary topics) and

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<sup>1</sup> Morison and Grimshaw, *supra* (n 4) at 7.

<sup>2</sup> Mahmoud Rudi Mousavi, 'A Comparative Study between Kuwait and Britain Level of Understanding the Scope of Free Speech in Both Countries' (2016) 7 *International Journal of Educational Research and Reviews* 880, 884.

<sup>3</sup> Morison and Grimshaw, *supra* (n 4) at 1-7.

<sup>4</sup> Martin Woodward, 'Legal Business: The Judicial Aspects of British Rule in the Gulf' (Qatar National Library, n.d.), para 5 accessed 5 May 2018

<sup>5</sup> Louis Allday, 'The Kuwait Cat's Meat Crisis' (Qatar National Library, n.d.), para 1-12 accessed 5 May 2018

<sup>6</sup> Myra Williamson, 'The diffusion of Western Legal Concepts in Kuwait: Reflections on the State, the Legal System, and Legal Education' in S Farran, J Gallen and C Rautenbach (eds), *The Diffusion of Law: The Movement of Laws and Norms around the World* (Routledge 2016) at 41.

<sup>7</sup> *Ibid.* at 38.

<sup>8</sup> Tim May, *Social Research: Issues, Methods and Research* (Open University Press 2011) at 132; see also Paivi Eriksson and Anne Kovalainen, *Qualitative Methods in Business Research* (SAGE 2015) at 4.

<sup>9</sup> Adam Frane, *Measuring National Innovation Performance* (Springer 2014) at 6.

offering some freedom to the interviewee who can then provide more details and additional insights.<sup>1</sup> The tool for the interviews (see Appendix B) was developed specifically for the project and improved with the help of triangulation.

The sample was based on quota approach:<sup>2</sup>the study aimed to recruit the people from the three branches of power, as well as lawyers and academics. The total of 25 people was involved in the project (five from each group). Only Kuwaiti people between 35 and 55 years were recruited to ensure that they have some experience with the topic; relevant expertise was guaranteed by their occupations (see Appendix A). All the applicable human subject protection concerns were reviewed; the participants were provided with an information sheet (see Appendix C) and consent forms (see Appendix D).

The data was analysed with the help of thematic analysis, which is an appropriate and well-established method that is employed with qualitative data.<sup>3</sup>A table with the established themes was developed to include the frequency of their appearance in the interviewee's responses. The main limitation of the methodology is the subjective nature of the results; this fact needs to be taken into account. Also, the results are not generalisable, but the study does not intend to generalise; it focused on exploration. The findings of the interview are presented below.

## Findings

All the responses of the 25 participants were analysed with the help of thematic analysis, which produced the themes and subthemes that are presented in Appendix E. The present section will consider each of the themes individually and describe them, using the examples and quotes from the participants' responses.

## Demographics

The final sample corresponds to the one planned. As can be seen in Figure 1, a little more than one-fourth of the participants were female (see Figure 1).

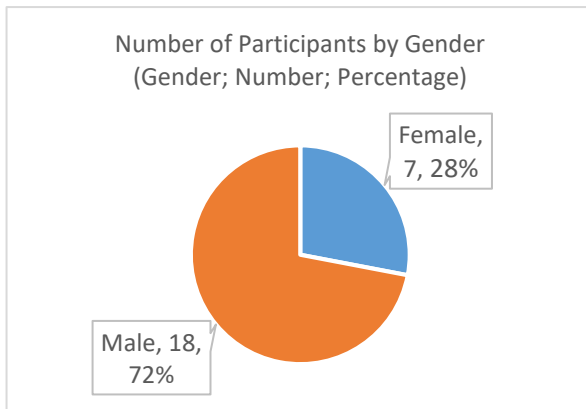


Figure 1. Gender of participants.

Most participants (nine or 36%) were between 45 and 49 years old. Only 5 participants (20%) were younger than 40 (see Figure 2). All the planned quotas were taken into account, and five participants were recruited from each group. The following groups were included: Parliament Members (PM, legislative authority), Judges (J, judicial authority), Lawyers (LW), Professionals (P, executive authority), and Academics (AC). All the participants reported being able to respond to the questions on the topic, and only one of them (P3) expressed uncertainty, stating that she is not a specialist in the field, which is why her account might be imprecise.

<sup>1</sup> May, *supra* (n 15) at 134-135; see also Eriksson and Kovalainen, *supra* (n 15) at 94.

<sup>2</sup> May, *supra* (n 15) at 100.

<sup>3</sup> Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology" (2006) 3 *Qualitative Research in Psychology* 77, 78.

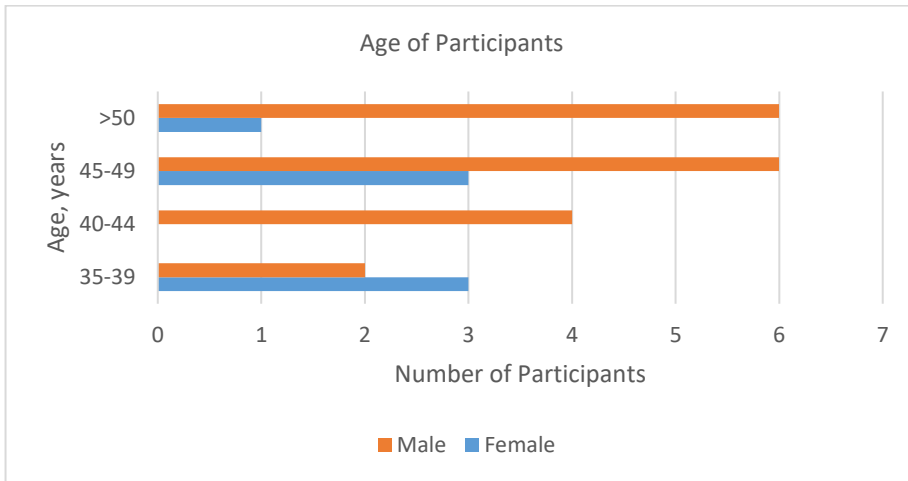


Figure 2. Age of participants.

### Coverage of the Topics of Interest

None of the participants suggests that the topics of interest are not important or should not be studied. Some of the participants specifically emphasise the idea that the topics of interest (predominantly, SOP and SOP in criminal justice) are important and require the coverage of the practical and theoretical research. Moreover, some of the respondents believe that currently, the topics do not receive sufficient coverage. According to one of the MPs “we really have a vacuum in research specialised in the separation of powers in criminal justice.”<sup>1</sup> Furthermore, the participants suggest that the present investigation and similar studies would be practically applicable; as suggested by LW4, SOP and related topics “actually need a lot of study to help legislators in the Kuwaiti National Assembly recognise the deficiencies in the separation of powers in justice in Kuwait.”<sup>2</sup> Thus, the significance of the topic was rather well-established as can be seen in the table below.

Themes	Subthemes and Key Codes	Representation
Importance of topics	The research of the topics is important	5PM 5LW 2P 4AC 4J
Attention to SOP in criminal justice	Increased attention from scientific communities required	5PM 4LW 2P 4AC 4J
	Increased practical investigation required	1PM LW P 1AC 1J

**Note:** Here and in the rest of the tables, the following abbreviations are used: PM – Parliament Members, LW – Lawyers, P – Professionals, AC – Academics, J – Judges. The figure before the letter specifies the number of respondents of a particular group who mention the theme in their responses.

### Kuwaiti Legislation Origins

The idea that the Kuwaiti legislation is the product of the influence of multiple schools is generally supported by the respondents: all of them acknowledge this fact. Several participants also suggested that the diversity of the influences which have shaped Kuwaiti legislation “distinguishes”<sup>3</sup> the latter makes it unique, “distinct.”<sup>4</sup> The idea that the mixed origins make the Kuwaiti legislation better was also voiced. In particular, it was suggested that the origins of Kuwaiti legislation make it flexible and beneficial for SOP and democracy. Also, some of the participants believe that having a variety of

<sup>1</sup> Participant MP3.

<sup>2</sup> Participant AC5.

<sup>3</sup> Participant PM1.

<sup>4</sup> Participant LW4.

sources is helpful for the legislators. These findings respond to one of the research questions of the study and indicate the idea that SOP can be supported by the legislation of Kuwait (see table below).

Themes	Subthemes and Key Codes	Representation
Kuwaiti legislation origins	Multiplicity of origins is present	5PM 5LW 5P 5AC 5J
	Uniqueness of Kuwaiti legislation	2PM 2LW 2P 1AC J
	Positive outcomes of Kuwaiti legislation origins	2PM 1LW P 1AC 3J
	Flexibility for legislators Variety of sources for legislators Contribution to democracy Positive impact on SOP	1PM 1LW 2P 1AC 2J 2PM LW P 2AC 2J 2PM 1LW 3P 3AC 1J

### Functions and Importance of SOP

A wide variety of functions were attributed to SOP by the participants. First, they noted that SOP is required for the independence of the three authorities, including the judiciary. Second, the significance of SOP for democracy was supported. As put by J5, SOP “is the essence of the democratic system.”<sup>1</sup> In contrast, the lack of SOP was associated with dictatorship and absolute power in the participants’ responses. According to J4, the developers of the Constitution were aware of this fact and specifically worked to incorporate the principle of SOP into the Constitution to ensure that the judiciary would be independent and that the rights of the citizens would be protected when accused.

Consequently, several participants also noted the idea that human rights are supported by SOP. Other functions that were noted included the improvement of transparency and the reduction of corruption in the government and the criminal justice system. The ultimate goal of SOP was reported to be concerned with public justice. In particular, J5 demonstrates that all or most of the SOP functions are required for public justice. Thus, the mentioned functions of SOP are shown to contribute to the eventual goal of a just judiciary system that can uphold public justice as can be seen in the table below and Figure 3.

Themes	Subthemes and Key Codes	Representation
Multiple functions of SOP	SOP for the independence of authorities	5PM 3LW 3P 2AC J
	SOP for judiciary independence	PM LW P 3AC 4J
	SOP to avoid dictatorship/SOP for democracy	4PM 4LW 3P 3AC 2J
	SOP for human rights	2PM 2LW 3P 4AC 4J
	SOP against corruption	PM 1LW 1P 1AC J
	SOP for transparency	2PM 2LW 1P 3AC 2J
	SOP for justice	2PM 2LW 1P 3AC 4J

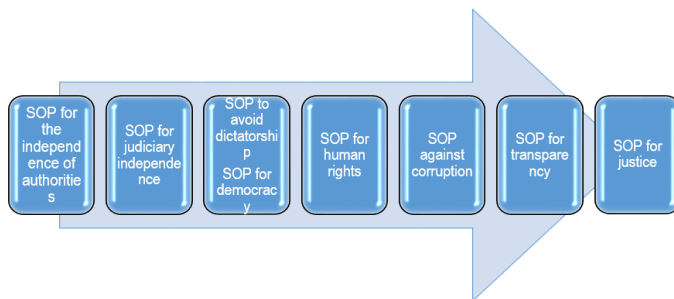


Figure 3. SOP functions contributing to justice.

<sup>1</sup> Participant J5.

Moreover, SOP within the judiciary was supported. In particular, as pointed out by PM1, the Constitution recommends the establishment of the Supreme Council of the Judiciary and the Council of State, in which the latter would be concerned with administrative justice. However, despite being mentioned in the Constitution,<sup>1</sup> this principle has remained inactive since 1962. According to the PM and one of the judges, this fact can affect the effectiveness and independence of the administrative judiciary in a negative way (see table below).

Themes	Subthemes and Key Codes	Representation
SOP within criminal justice	Constitutional roots of SOP within criminal justice	1PM LW P AC 1J
	Lack of SOP within criminal justice in Kuwait	1PM LW P AC 1J
	Need for SOP within criminal justice in Kuwait	1PM LW P AC 1J

### SOP in Kuwait

When considering Kuwaiti SOP in the field of criminal justice, the respondents employed the proposed criteria (see the end of Appendix B), and some of them directly expressed their agreement with the factors chosen for consideration (see table below). Neither of the participants suggested that the criteria were inappropriate; some of them just did not comment on their appropriateness, but they still employed the criteria.

Themes	Representation
Proposed research criteria approval	2PM 1LW 1P 2AC 1J

The majority of the participants explicitly characterise SOP as a tool that can effectively ensure the protection of Kuwaiti population, even though some of them also note the issues that Kuwaiti SOP experiences. The rest of the participants also commend SOP as a principle, but they focus on the issues that Kuwaiti SOP faces. When considering the guarantees of SOP in Kuwait, the majority of the interviewees noted Constitution,<sup>2</sup> but they also mentioned other legislation (Regulation of the Judiciary Law,<sup>3</sup> as well as specific precedents), administrative provisions, the Parliament, Constitutional Court, and even public opinion.

The effectiveness of SOP in Kuwait can be described as follows: it is generally effective and has a relatively good legislative foundation (especially in the form of the Constitution), but there is a number of issues that “impedes its application, which makes the abuse of power potentially possible.”<sup>4</sup> Given the attention of the project to criminal justice SOP, most of the examples offered by the participants are mostly concerned with the latter, but some illustrations are not connected to it. In particular, as pointed out by PM1, in Kuwait, “the members of the executive power, the ministers, are considered members of the legislative power by virtue of their posts.”<sup>5</sup> From the perspective of the PM, this issue suggests that the principle of SOP is not fully implemented in Kuwait.

Most controversial issues that are considered by the participants are related to the judiciary. The problem of the Article 2 of the Regulation of the Judiciary Law<sup>6</sup> consists of the fact that it moves the “acts of sovereignty” out of the field of the judiciary’s responsibility, which is viewed as unconstitutional by the participants since this piece of legislation violates SOP. The executive power also has control over the management of misdemeanour cases and has the right to contract foreign judges. Investigators are not separated from the executive power either. Furthermore, as pointed out by the respondents, the financial independence of the judiciary is compromised: the Ministry of Justice is the executive body that is busy with the judicial budget, which PM2 describes as a “blatant violation”<sup>7</sup> of SOP.

<sup>1</sup> Constitution of Kuwait, 1962, art. 171.

<sup>2</sup> Constitution of Kuwait, 1962, art. 50, 163.

<sup>3</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

<sup>4</sup> Participant AC3.

<sup>5</sup> Participant PM1.

<sup>6</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

<sup>7</sup> Participant PM2.

Another issue that is pointed out by the participants is the fact that the Judicial Council includes the Undersecretary of the Ministry of Justice, who is obviously a member of the executive power. PM2 suggests that this person cannot have notable power since it is just one representative of the executive power among those of the judiciary power, but he still views the presence of the Undersecretary in the Judicial Council as an issue that compromises SOP. In fact, the participants highlight the idea that this fact is unconstitutional. Overall, at least two participants explicitly suggest that in Kuwait, the executive branch has much power over the remaining two. As one of them puts it, “the elements of preference and influence are always in favour of the executive power over other authorities.”<sup>1</sup> Thus, notable issues with SOP in Kuwait were found during this study (see table below).

Themes	Subthemes and Key Codes	Representation
SOP in Kuwait	SOP is an effective tool in achieving the protection of the population of Kuwait	4PM 2LW 5P 4AC 5J
	Guarantees of SOP in Kuwait Constitution Parliament Regulation of the Judiciary Law Public opinion Precedents Administrative provisions Constitutional Court	4PM 4LW 5P 5AC 5J 1PM 2LW P 1AC 1J PM LW 2P AC 3J 1PM 1LW P AC 1J PM 1LW P AC J PM 1LW P AC J 2PM 1LW 2P AC J
	Deficiencies in Kuwaiti SOP Incomplete application of SOP in practice Article 2 of the Regulation of the Judiciary Law Financial dependence of the judiciary Foreign judges as a problem Need for investigator independence Executive control over misdemeanours The presence of the Undersecretary of the Ministry of Justice in the Supreme Council The executive branch overpowering the rest	2PM LW P 2AC J 1PM LW P 4AC 4J 5PM 3LW 2P 5AC 4J 3PM 2LW P 1AC 4J 5PM 4LW 3P 5AC 5J 3PM 3LW P AC J 5PM 4LW P 2AC 3J 2PM LW P AC J

### Characteristics of Kuwaiti Judicial System

The effectiveness of Kuwaiti SOP in the judiciary is supported by multiple respondents. For example, according to J4, the Kuwaiti “judiciary is considered a distinguished judiciary in the region.”<sup>2</sup> which, from his perspective, indicates that the SOP within this system is effective. However, J4 proceeds to admit that “there may be shortcomings”<sup>3</sup> which might have negative effects on the effectiveness of the system. Using the proposed criteria, the respondents noted the following characteristics of Kuwaiti judicial system, many of which can be used to exemplify the issues with SOP in Kuwait.

The participants commend the transparency of Kuwaiti judiciary almost unanimously; only one of the participants points out that there are “issues over cases of a special nature, such as those having a great political or commercial interest”<sup>4</sup> (see Figure 4). The same person is also the only one to suggest that the judicial system demonstrates some favouritism when judge appointment is concerned, “which is evident from the repetition of certain names and family ties.”<sup>5</sup> No other participant explicitly mentions favouritism. Most of the participants also commend the appeal system of Kuwait, and some of them praise the judge dismissal mechanism.

<sup>1</sup> Participant PM1.

<sup>2</sup> Participant J4.

<sup>3</sup> *Ibid.*

<sup>4</sup> Participant PM1.

<sup>5</sup> *Ibid.*

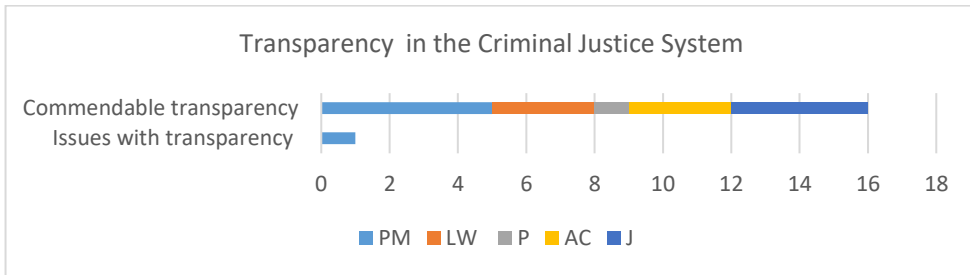


Figure 4. Transparency in Kuwaiti criminal justice system.

Another very important topic is the independence of the judiciary. According to J5 and other participants, “no person has the right to interfere in the judge’s decisions and acts,”<sup>1</sup> which means that the independence of the judges is guaranteed in Kuwait. However, there are some aspects that can compromise this independence.

First, the fact that the Minister of Justice and his deputy attend the Supreme Judicial Council when the appointment of its members is in process was pointed out as problematic. The Minister of Justice has no right to vote in this process, but in the view of some of the participants, the situation still can be viewed as “indirect interference,”<sup>2</sup> which “may put pressure on members of the judicial authority and affect any decision that may be taken.”<sup>3</sup>

Moreover, as pointed out by participants, the Ministry of Justice does have some power over the judiciary, which might be translated to some indirect power over the appointment procedures. In particular, as stated by J4, has the right to contract foreign judges, which is “an unjustified intervention”<sup>4</sup> that can compromise the independence of the judiciary. J5 calls it a “blatant violation of the judicial authority,”<sup>5</sup> as well as the principle of SOP. PM1 reports that there are some efforts aimed at the Kuwaitization of the judiciary, but states that the problem of foreign judges is still present.

Furthermore, the Ministry of Justice is concerned with the supervision of the judicial budget. According to J4’s opinion, this dependence can provide the Ministry of Justice with the opportunity to affect the judiciary. Finally, the topic of the militarisation of the General Directorate of Police Investigations includes the concern with the transfer of interrogation authority to the military. According to PM1, the military “is constantly following the instructions of its superiors by virtue of military education,”<sup>6</sup> which, consequently, can compromise the independence of the interrogator. Overall, the executive power has multiple mechanisms that it can employ to affect the judiciary.

Other themes that are mentioned by the participants include the presence of bureaucracy in the system, which slows down its processes, and the need for SOP within the judiciary itself (as proposed by the Constitution). Furthermore, the participants were asked to evaluate the cases of the miscarriages of justice and the rights of offenders and inmates. Most of the interviewees generally believe that the Kuwaiti criminal justice system is just and that the miscarriages do not occur particularly often. However, they report that the situation can be different for political crimes. As pointed out by PM2, “in general the Kuwaiti judiciary can be relied upon at all levels, but there may be controversial cases that are political in nature.”<sup>7</sup> According to the participants, this issue may be caused by the fact that there is no direct regulation of political crimes, which is a problem in itself.

Regarding the rights of inmates, as pointed out by LW1, the “evaluation of the rights of offenders and inmates is bad”<sup>8</sup> specifically because the practice of their rights is insufficiently in line with the legislation. The respondents generally agree that the rights of offenders and inmates are protected in theory, but several of them also point out the idea that in practice,

<sup>1</sup> Participant J5.

<sup>2</sup> Participant J4.

<sup>3</sup> Participant J3.

<sup>4</sup> Participant J4.

<sup>5</sup> Participant J5.

<sup>6</sup> Participant PM1.

<sup>7</sup> Participant PM2.

<sup>8</sup> Participant LW1.



the relevant legislation is not always realised. All the themes pertinent to the characteristics of Kuwaiti judicial system can be seen in the table below.

Themes	Subthemes and Key Codes	Representation
Characteristics of Kuwaiti judicial system	Transparent judiciary	5PM 3LW 1P 3AC 4J
	Issues with transparency in the judicial system	1PM LW P AC J
	Favouritism and patronage in judicial system	1PM LW P AC J
	Judge independence and related issues Legislative independence of judges (Article 163) Appropriate judge dismissal mechanism Favouritism in judge appointment The presence of the Undersecretary of the Ministry of Justice in the Supreme Council Financial dependence of the judiciary (Ministry of Justice) Foreign judges (appointed by the Ministry of Justice) Effort at judiciary Kuwaitization No separation of investigators from the executive power	PM 2LW 3P 2AC 4J PM LW P 1AC 3J 1PM LW P AC J 5PM 4LW P 2AC 3J 5PM 3LW 2P 5AC 4J 3PM 2LW P 1AC 4J 2PM LW P 1AC J 5PM 4LW 3P 5AC 5J
	Excessive bureaucracy	PM LW 3P AC J
	Need for SOP within the judiciary	1PM 1LW P AC J
	Miscarriages of justice Rare miscarriages of justice Political crimes and miscarriages of justice No political crime category (legislative level issue)	5PM 4LW P 1AC 4J 4PM 3LW P 1AC J 5PM 3LW 5P 4AC 4J
	Rights of offenders and inmates Appropriate legislation for the rights of offenders and inmates Inappropriate practical application of the rights of offenders and inmates	5PM 2LW 1P 1AC 5J 5PM 3LW P 1AC 1J
	Commendable appeal system	5PM 5LW 4P 2AC 5J

It is noteworthy that P3 who is working at the Ministry of Justice suggests that the situation with the budget “may be theoretically unacceptable, but actually, there is no interference from the part of our Ministry.”<sup>1</sup> Also, she believes that the fact that the Ministry does not appoint judges mitigates the fact that it contracts foreign judges. A similar position is expressed by P1 and P2, who believe that “overseeing” the budget is not the same as “controlling” it. However, LW2 disagrees with this position, stating that even “if the ministry claims that all it regulates is the financial procedures, it does not mean that it has the right to the same.”<sup>2</sup>

In a similar way, P1 reports that he does not “find a significant negative effect of this issue”<sup>3</sup> when talking about the lack of the separation of investigation from the executive power. P1 also believes that there is no need for a political crime law. However, these statements are contradicted by the suggestions of some of the participants that the problem of the dependence of the judiciary and the lack of appropriate legislation results in miscarriages of justice. In particular, LW2 relates almost every issue of the judiciary with the intervention of the executive power, including the miscarriage of justice in the cases of political crimes and the poor practical implementation of the rights of culprits and detainees. LW3 also suggests that the political crimes issue is connected to the fact that misdemeanours are investigated by the Ministry of Interior. The topic of the causes of the issues of SOP will be considered next.

<sup>1</sup> Participant P3.

<sup>2</sup> Participant LW2.

<sup>3</sup> Participant P1.

### Possible Causes of Issues

A common theme in the responses is the idea that the dependence of the judiciary on the executive authority results in negative outcomes. This theme is also connected to the statements that some of the shortcomings of the judiciary are the result of the activity or inactivity of the executive and legislative branches. For instance, LW3 reports that the miscarriages of justice with respect to political crimes are the result of the interventions of the executive branch. Moreover, as pointed out by the participants, the lack of the definition of political crimes is an issue that is caused by the legislative bodies. Apart from that, some of the issues are interconnected. For example, AC3 and AC5 suggest that the presence of foreign judges, who are contracted by the executive branch, is the result of the financial dependence of the judiciary. Thus, at least some of the issues are connected to the executive and legislative power.

Such statements imply that while dependent, the judiciary cannot resolve some of its issues. For example, when considering the problem of political crimes, PM1 states that he does not “blame the Kuwaiti judiciary,”<sup>1</sup> pointing out that this issue is outside of the competency of the latter. Similarly, J4 suggests that since it is the decision of the executive branch to contract foreign judges, the related shortcomings are “not on the part of the judicial authority.”<sup>2</sup>

In this connection, the participants have proposed the idea that the lack of SOP, dependence of the judiciary, and legislative and executive shortcomings or misconducts are some of the key reasons of the difficulties experienced by the Kuwaiti judiciary. Some of the examples of the latter include the lack of required legislation (for instance, on political crimes) and the exploitation of this issue (for instance, the intervention of the executive power in political crime management). Also, the participants note “the failure of the National Assembly to perform its essential functions, its focus on supervision rather than legislation”<sup>3</sup> and the presence of unconstitutional legislation, for example, Article 2 of the Regulation of the Judiciary Law<sup>4</sup> (and its exploitation by the executive power). In summary, the lack of proper cooperation between the branches of power was established as the cause of the issue.

On the other hand, the participants do not suggest that the judiciary cannot do anything to improve the situation. In fact, J4 expresses firm belief that “the legislative power has a major role in reforming these shortcomings”<sup>5</sup> because the latter are directly concerned with its field of activity. Consequently, the inactivity of the judiciary is viewed as one of the reasons for the issues. Moreover, the inactivity of the people of Kuwait was also noted; it is the belief of some of the participants that the people can and should promote changes in Kuwait to ensure SOP and democracy.

Themes	Subthemes and Key Codes	Representation
Possible causes of issues in Kuwaiti judiciary	Lack of SOP	1PM 2LW P AC J
	Dependence of the judiciary	1PM 2LW P AC J
	Legislative and executive shortcomings cause SOP inefficiencies	1PM LW P 2AC 2J
	Unconstitutional legislation	1PM 4LW 1P 2AC 3J
	Lack of required legislation	PM LW P 1AC 1J
	Exploitation of the inappropriate legislation by the executive power	PM 1LW P 2AC 1J
	National Assembly focuses on supervision, not legislation	
	Weak cooperation between power branches	1PM 1LW P AC 1J
Weak public activity (absence of pressure on the legislative branch from the public)	2PM LW P AC 1J	
Inactivity of the judiciary	PM 2LW P AC 1J	

<sup>1</sup> Participant PM1.

<sup>2</sup> Participant J4.

<sup>3</sup> Participant AC2.

<sup>4</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

<sup>5</sup> Participant J4.

A number of opinions were voiced regarding the possibility of flaws in the Constitution that could result in issues. Many participants suggest that the Constitution provides sufficient information about SOP and can serve as its guarantee. However, it was also suggested that while “Article 50 refers to the separation of powers in a clear manner,”<sup>1</sup> other articles that mention the three branches of power tend to “mix”<sup>2</sup> them. An example that is offered by PM1 illustrates this tendency. As pointed out by the interviewee, “the members of the executive power, the ministers, are considered members of the legislative power by virtue of their posts.”<sup>3</sup> Therefore, the legislative and executive powers are not fully separated in the Constitution itself despite the statement made in Article 50.<sup>4</sup> Furthermore, the notion of the “cooperation” of powers was noted as problematic because it can prompt confusion and even be used to negate the principle of SOP. In particular, according to J2 and AC3, the Ministry of Justice employs the argument of cooperation to justify it “overseeing the judicial budget,”<sup>5</sup> which limits the independence of the judiciary.

It should be pointed out that this position can be contested. Some of the participants do not view the use of the word “cooperation” as problematic. Instead, they consider Constitutional phrasing to be sufficiently clear. For instance, J3 suggests that the Constitution “provides for separation and then cooperation,”<sup>6</sup> which implies the greater significance of SOP that can be followed by cooperation in case the latter does not lead to interference. In fact, according to J3, cooperation and interference are distinct, and since the Constitution only mentions cooperation, it does not condone interference. In turn, AC3 suggests that the “cooperation” element can be beneficial since it offers opportunities for a flexible approach to the arrangement of the three branches, but in her view, it may have resulted “wrong practices.”<sup>7</sup> According to AC3, the Constitution stresses the importance of SOP, which, in her view, includes “administrative and financial separation”;<sup>8</sup> AC3 does not view these aspects of independence as subject to the “flexibility” related to cooperation.

The existence of the legislation that is unconstitutional and tends to endanger SOP was also mentioned by the participants. According to J4, the “problem is not in the Kuwaiti Constitution... the problem is in the legislation that violates this article.”<sup>9</sup> A similar idea is proposed by J2. An example of such unconstitutional legislation, which is mentioned, among other participants, by J4 is the Article 2 of the Regulation of the Judiciary Law,<sup>10</sup> which deprives the judiciary of the right to consider the “acts of sovereignty.” J4 describes the situation as the one in which “the Executive Authority can violate the law.”<sup>11</sup> AC2 also believes that it is the unconstitutional legislation that causes the issues while the Constitution is sufficiently clear.

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<sup>1</sup> Participant PM1.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Constitution of Kuwait, 1962, art. 50, 56.

<sup>5</sup> Participant J2.

<sup>6</sup> Participant J3.

<sup>7</sup> Participant AC3.

<sup>8</sup> *Ibid.*

<sup>9</sup> Participant J4.

<sup>10</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

<sup>11</sup> Participant J4.

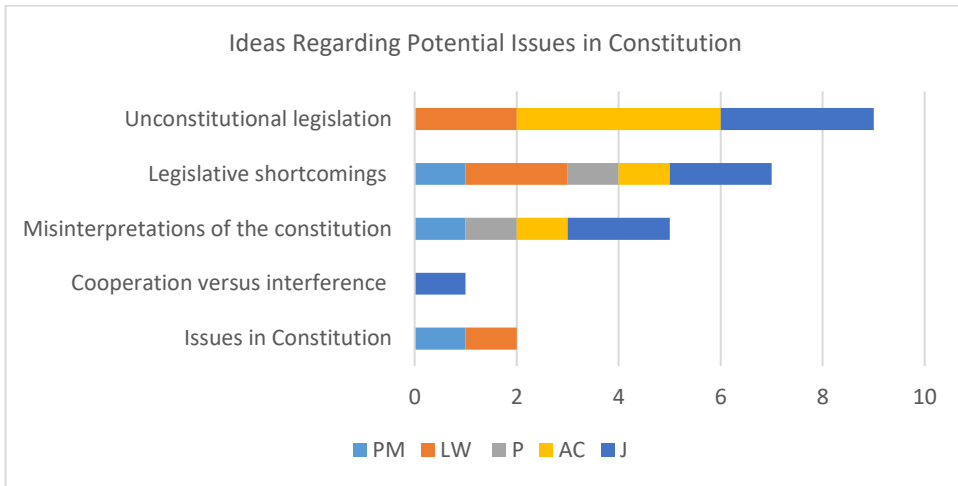


Figure 5. Considerations of the potential issues in Constitution.

J5, on the other hand, admits the presence of wrongly developed legislation but also suggests that SOP issues may be the result of incorrect interpretations of the law. J1 also supports the idea of misinterpretation stating that he does not “blame the Constitution” but rather “the understanding of the legislator.”<sup>1</sup> AC1 points out that Constitutional texts are not supposed to be detailed, which implies that the definition of Kuwaiti Constitution is sufficient, but misinterpretations do take place. Finally, the absence of appropriate legislation or “legislative vacuum”<sup>2</sup> as phrased by J3 may result in the problem of unconstitutional activities. The example of the latter issue is the absence of the regulation of political crimes, which results in miscarriages of justice and violations of SOP as was shown above. Figure 5 and the table below illustrate the debate regarding the appropriateness of the constitutional definition of SOP.

Themes	Subthemes and Key Codes	Representation
Issues in Constitution	Inappropriate constitutional definition of SOP	1PM 1LW P AC J
	Appropriate constitutional definition of SOP. Real causes of issues: Cooperation versus interference Misinterpretations of the constitution Legislative shortcomings Unconstitutional legislation	PM LW P AC 1J 1PM LW 1P 1AC 2J 1PM 2LW 1P 1AC 2J PM 2LW P 4AC 3J

### Additional Measures and Solutions

When considering the additional mechanisms that can help SOP or be otherwise conducive to it fulfilling its function, the participants made two major suggestions: they focused on the public opinion and its various aspects and the transparency and independence of the press. The former element was mentioned predominantly for its ability to exercise pressure on the government in order to push it to ensure SOP and make various changes that would prevent dictatorship and support democracy. Furthermore, some of the participants point out the importance of educating the public to ensure their ability to defend their interests. As put by PM4, it is necessary to “raise the awareness of people so that they will put pressure on their representatives.”<sup>3</sup> The participants also highlighted the role of various organisations in making the public opinion heard (including the promotion of awareness and the pressuring of the government into the direction of the public will). The

<sup>1</sup> Participant J1.

<sup>2</sup> Participant J3.

<sup>3</sup> Participant PM1.

organisations include those concerned with human rights and transparency, as well as the professional organisations of the people working in the criminal justice system.

According to some participants, the public opinion is also greatly influenced by the press, which is why the freedom and independence of the press were also viewed as a form of complementary safeguards. For example, PM1 reports taking action in this respect by filing motions “to promote the Kuwaitization and transparency of the press,”<sup>1</sup> in particular, with respect to financing. Also, in his opinion, editorial policies and the appointment of editors and journalists by the owner of a newspaper should be avoided. Thus, the PM suggests a number of actions that can help to improve the freedom of speech and keep the press independent. The additional measures can be found in the table below.

Themes	Subthemes and Key Codes	Representation
Additional measures to ensure the protection of human rights (aside from SOP)	Additional measure: public opinion The activities of the human rights organisations, transparency organisations, Kuwait Lawyers Society, and Association of Lawyers Improvement of public awareness Pressuring the government to make changes	1PM 4LW 2P 1AC 1J 3PM LW 1P 1AC J 2PM 4LW 2P 1AC 3J
	Additional measure: transparency and independence of the press	2PM LW P 1AC J

Apart from the additional measures, the participants considered the factors that can help to resolve the issues that they had mentioned. In general, the need for change is supported by every participant, although they may have different foci. For example, the Ps who do not consider the dependence of the judiciary to be a problem focus on the issue of bureaucracy and suggest combating it. In particular, as proposed by P3, “it is time to reduce paperwork and give more powers to ordinary employees in order to speed up the course of judicial work.”<sup>2</sup> However, the rest of the participants are more concerned with ensuring the independence of the judiciary.

They offer several solutions to the issue. Given the fact that many of the issues were connected to the problems with the legislative and executive branches, many interviewees focus on them. They point out the idea that legislation can be used to resolve virtually any issue and highlight the importance of the key legislative body (National Assembly) in the process. Furthermore, they emphasise that the cooperation of the executive power with the judiciary is required to combat the currently present imbalance in their power dynamics.

Moreover, since the inactivity of the judiciary was criticised by the participants, suggestions were made about some changes in it, including the introduction of Kuwaitization and SOP (consisting of the separation of administrative justice). Since Kuwaitization is currently prevented by the contracts with foreign judges that are made by the executive power, this measure may be not entirely within the judiciary’s power. However, as pointed out by LW3, this issue can be resolved by one of the above-mentioned solutions; in particular, the legislative power can develop “a law that prevents the Ministry of Justice from contracting foreign judges.”<sup>3</sup> There were also direct comments about the need to ensure SOP, but, in general, all the suggestions seem to be related to the idea of reducing the power of one branch over the other, which constitutes SOP. In summary, the proposed solutions target the causes of the issues that were found by the participants, as well as some individual problems.

Themes	Subthemes and Key Codes	Representation
Solutions to the SOP inefficiencies in Kuwait	Need for change	5PM 5LW 5P 5AC 5J
	Legislation as a solution	PM 1LW P 3AC 1J
	National Assembly	1PM 2LW P AC J

<sup>1</sup> Participant PM1.

<sup>2</sup> Participant P3.

<sup>3</sup> Participant LW3.

	Cooperation of the executive branch with the judiciary	2PM LW P 1AC J
	Kuwaitization of the judiciary	2PM LW P AC J
	SOP within the judiciary	1PM LW P 1AC J
	Ensuring SOP	2PM LW 1P AC J
	Combating bureaucracy Reducing paperwork Sharing power	PM LW 3P AC J PM LW 1P AC J

### Change Efforts

An important theme that was identified is the efforts aimed at changing the exposed issues. Multiple efforts have been mentioned. Some of them include the activities in which the participants take part due to their occupation (for example, educators spread the information about SOP, and PMs promote it in their practice). Apart from that, the use of research to advance SOP and some public efforts were also mentioned. For instance, PM1 describes the efforts aimed at taking away the authority of the executive power over misdemeanours, and PM2 reports those targeted at improving the practical application of the guarantees of the rights of inmates and offenders with the focus on the resources of correctional institutions. Moreover, it was stated that the government reflects the need for the improvement of the Kuwaiti criminal justice system and SOP in its vision (in particular, slogans). However, PM1 does not believe that change is a priority of the current government (see table below).

Themes	Subthemes and Key Codes	Representation
Change efforts	Occupational	4PM 5LW 2P 4AC 5J
	Research-related	PM 1LW P 3AC J
	Public	1PM 1LW 2P AC J
	Change is not a governmental priority in practice	1PM LW P AC J
	Change is supported by the governmental vision	1PM LW P AC J

The success of such campaigns is not discussed by the majority of the participants, but there are some conclusions that can be made. For example, PM1 reports that “several campaigns have failed to transfer”<sup>1</sup> the authority over the investigation of misdemeanours from the executive to the judiciary power. Similarly, L4 reports that they are “tired of asking the government to respect the Kuwaiti Constitution.”<sup>2</sup> However, neither of the participants reports giving up change efforts; rather, they all make proposals for change, and the majority of them report working to advance it.

Apart from that, some of the participants seem to communicate a call to action. For example, J5 believes that “academics, researchers and transparency societies” should “exercise pressure”<sup>3</sup> to address the inefficiencies described above. J2 highlights the importance of the activity of the judiciary, including individuals, who can exert pressure on the legislative and executive branches. The same idea was proposed by J3 who considers the inactivity of the judiciary to be one of the reasons for current SOP issues. The participants believe that by taking action, the judiciary can reclaim its independence and that the public can exert sufficient pressure on the legislative branch to improve the situation.

### Additional Notes: Participants’ Perspectives

It is noteworthy that most of the participants expressed their personal attitudes and evaluations of the discussed phenomena. One of the issues that many of the respondents feel strongly about is the presence of foreign judges in the system and want to ensure the Kuwaitization of the judiciary. PM1 rationalises his perspective by suggesting that Kuwaiti judges would have a greater emotional investment in their position. In particular, foreign judges “lack any ties to Kuwait” and are not “prepared to fight battles or take risks and sacrifices” since they come “to collect his children’s livelihood and

<sup>1</sup> Participant PM1.

<sup>2</sup> Participant L4.

<sup>3</sup> Participant J5.

return<sup>1</sup> to their country. PM1 also expresses strong a belief that a “citizen judge” has a better understanding of the Kuwaiti context, in particular, the “social and economic foundations on which the regime is based.”<sup>2</sup> Thus, PM1 suggests that the employment of foreign judges should be detrimental to the country.

On the other hand, PM2 expresses confusion about the situation, suggesting that the prevalence of foreign judges implies the lack of vacancies for Kuwaiti judges. In his view, the preference of foreign judges cannot be explained logically. He states that he does not believe that there is any “justification for the existence of any foreign judge”<sup>3</sup> because, according to him, there is no shortage of Kuwaiti law graduates. This sentiment is shared by LW4 who finds the situation “funny, as if Kuwait does not have legal Kuwaiti cadres who are capable of working as judges.”<sup>4</sup>

PM3 believes that foreigners should not be contracted because they might be appointed through different criteria in their home countries, although he stipulates that in the cases when it might be necessary, the judiciary needs to be involved in the process, not the executive power. PM4 highlights the idea that Kuwaiti citizens have less reason to trust foreign judges. AC2 proceeds to suggest that “there is no need to appoint a foreign judge, unless the Executive Authority wants to interfere in the judicial authority.”<sup>5</sup> In summary, the problem of foreign judges is associated with multiple arguments and strong feelings for some of the participants.

Apart from that, some hopeful comments were offered. For instance, J1 expresses the hope that the change efforts made by him and his colleagues can improve the situation. J5 hopes to see more research on SOP, believing that it should be helpful in improving the criminal justice in Kuwait. Most of the participants mention change efforts and their own contribution to such efforts. They also propose meaningful solutions for the issues. They have a practically-oriented and optimistic approach to the desired changes.

## Conclusions

The present chapter has summarised the findings of the interviews. The discrepancies in the responses are few; the perspectives of the respondents came into direct confrontation in the cases of the transparency of the criminal justice system, the presence of flaws in Constitution, and the impact that the interference of the executive branch has on the judiciary. In most cases, the participants’ responses either support or complement each other. The significance of the topic was established along with the multiple functions of SOP; Kuwaiti SOP, especially in criminal justice, was analysed. Moreover, the criminal justice system was also analysed, the causes of issues within it were reviewed, and suggestions for its improvement were offered. The findings covered the key topics that the interviews intended to cover, and the results will be discussed in the next section.

## Discussion

The respondents covered the interview questions in a way that was almost unanimous. The key themes can be used to support, illustrate, or expand on the topics discovered during the literature review. First of all, the participants justify the research: some of them explicitly pointed out that the discussion of its topics is essential, and the rest did not oppose this idea. Furthermore, some of the participants reported that increased academic or practical interest to the topics is needed. Thus, the need for the current research is supported by the respondents.

Furthermore, the participants confirmed the idea that SOP is important for a democratic society, which is expressed in the studied literature.<sup>6</sup> They suggested multiple functions of SOP, some of which are not reported by the reviewed studies, but in general, the idea that SOP is a requirement for democracy and the independence of the judiciary was voiced. Moreover, a couple of respondents suggested the need for SOP within criminal justice (to separate administrative cases), stating that

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<sup>1</sup> Participant PM1.

<sup>2</sup> *Ibid.*

<sup>3</sup> Participant PM2.

<sup>4</sup> Participant LW4.

<sup>5</sup> Participant AC2.

<sup>6</sup> Barkow, *supra* (n 2) 989, 995; see also Michael Socarras, ‘Judicial Modification of Statutes: A Separation of Powers Defense of Legislative Inefficiency’ (1985) 4 *Yale Law & Policy Review* 228, 228-229; Samuels (n 1) 1; Gerard Conway, ‘Recovering a Separation of Powers in the European Union’ (2011) 17 *European Law Journal* 304, 306-307; Matthew Hall, ‘The Semiconstrained Court: Public Opinion, The Separation Of Powers, And The U.S. Supreme Court’s Fear Of Nonimplementation’ (2013) 58 *American Journal of Political Science* 352, 352-353.

the approach is proposed by the Constitution,<sup>1</sup> which is true. Overall, the idea of SOP is valued by the majority of the participants, and many believe that SOP is vital for protecting the people of Kuwait.

Apart from that, participants reported the complex origins of Kuwaiti legislation<sup>2</sup> and suggested that this specific feature can have positive outcomes for the country and its SOP. The latter idea is not directly supported by the literature, which mostly discovered negative side-effects,<sup>3</sup> but the found issues also do not contradict the specific outcomes that the participants mention. Also, some of the participants expressed pride with respect to the uniqueness of Kuwaiti legislation.

While using the SOP criteria developed by the study, no participant critiqued them, and some suggested that they were helpful. Therefore, the tool can be employed in this research. It helped the participants to determine that while multiple guarantees of SOP exist (most of the interviewees focused on the Constitution<sup>4</sup>), in practice, SOP is not applied correctly. Some of the issues that they named included Article 2 of the Regulation of the Judiciary Law,<sup>5</sup> the problematic nature of which was discovered during the literature review, and the dependence of the judiciary on the executive power, which was also found during the consideration of studies. The latter factor incorporates multiple issues, including the problem of foreign judges, which is discussed in the literature review,<sup>6</sup> investigator dependence, the oversight of the budget of the judiciary by the executive power, and the appointment issues.<sup>7</sup> The respondents also discuss the problem of the executive control over misdemeanours and, in general, they conclude that the executive branch may have overpowered the rest of the branches in Kuwait.

Additional issues that were found in Kuwaiti judiciary are concerned with transparency, favouritism, bureaucracy, miscarriages of justice with respect to political crimes, which, as shown in the literature review and findings analysis, are not a specific category in Kuwaiti legislation,<sup>8</sup> and some problems with the rights of the offenders and inmates. It should be pointed out that many of the participants believe that the transparency and offender and inmate rights protection in Kuwait are appropriate. However, the presence of negative evaluations of the mentioned phenomena implies that problems can be present, which, for transparency, is shown in the literature.<sup>9</sup> Also, the participants commend the appeal system in the judiciary and believe that it is rather just.

As for the problems, many of the participants tie them together with the lack of SOP and the need for judiciary independence. They also consider legislative shortcomings that were discovered during the literature review,<sup>10</sup> insufficient cooperation of the powers, and the inactivity of the judiciary and the public. The participants suggested the need for rectifying these issues while also addressing specific problems (for example. Kuwaitizing the judiciary and combating bureaucracy) and supporting human rights organisations. Change efforts are also introduced by the participants. For instance, the Kuwaitization efforts, as well as the occupational and research-related attempts, were mentioned. Some discontent with the progress of the change was also voiced, but a respondent suggested that the vision of the government supports change. The change efforts remained mostly uncovered by the literature review. In general, the respondents added a number of important details as can be seen above.

As can be seen from the information presented above, in the majority of cases, no direct contradictions in the themes were found. Consequently, the few contradictions that do occur require close consideration. One of the reasons for the differences in opinions can be associated with the experiences of the participants. For example, the only participants who suggested that the factors which limit the independence of the judiciary are not problematic were the professionals who belonged to the executive authority. Both the representatives of the judicial and legislative authorities, as well as the lawyers

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<sup>1</sup> Constitution of Kuwait, 1962, art. 171.

<sup>2</sup> Williamson, *supra* (n 13) 25-41

<sup>3</sup> *Ibid.*

<sup>4</sup> Constitution of Kuwait, 1962, art. 50.

<sup>5</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

<sup>6</sup> Herbert Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Materials* (SUNY Press 1975), 110; see also Williamson, *supra* (n 13) at 36; Alkarama Foundation, 'Kuwait: Report submitted to the Human Rights Committee in the context of the third periodic review of Kuwait' (Alkarama Foundation, 2016) 13. Accessed 22 March 2017.

<sup>7</sup> Alkarama Foundation, *supra* (n 84) at 13; see also Freedom House, 'Kuwait' (Freedom House, 2016), para. 3. accessed 12 January 2017.

<sup>8</sup> Mousavi, *supra* (n 9) 880, 884.

<sup>9</sup> Williamson, *supra* (n 13) at 36.

<sup>10</sup> Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.



and academics who did not belong to any of the authorities, disagree with this position and consider the limitation of the power of the judiciary a problem.

On the other hand, some of the representatives of the executive power described the activities of the executive power that limit SOP and judiciary's independence as not problematic. It can be reasonably assumed that as a part of the executive branch, they might find it difficult to criticise the approaches of the latter. Alternatively, they might never witness the problems associated with the dependence of the judiciary and the overpowered nature of the executive power the way the rest of the participants do. In general, the position of the interviewees may have been affected by their personal experiences, and since the members of the judiciary are more likely to have relevant experience in this situation, their position seems to need to be prioritized.

Another topic with respect to which direct discrepancies were found consist of the possible flaws in the Constitution, and here, individual positions or interpretations can be viewed as the cause. For example, only one PM and one LW suggest that issues within constitution are possible; the rest of the participants do not share the position and imply that the misinterpretation of Constitution or the breach of its statements are more likely to be the issue. Here, it may also be suggested that for some people, the idea of criticising the Constitution may appear controversial. This view can be supported by the point made by one of the PMs: in the Constitution, it is established that Prime Ministers, members of the executive power, are indeed a part of the legislative power.<sup>1</sup> While the number of Prime Ministers in the legislative body is limited, the situation still presupposes a breach of SOP that is present directly in the Constitution.

On the other hand, some of the Constitution-related discrepancies in answers may be associated with different interpretations of the same phenomenon. In particular, the question of cooperation is viewed as a loophole for anti-SOP activities by some of the participants who also describe the cases of it being used that way by the executive power.<sup>2</sup> On the other hand, some participants believe that cooperation differs from interference, and the problem is not in the phrasing of the Constitution but the deliberate or accidental misinterpretation of an understandable term.<sup>3</sup> Such different perspectives are accompanied with sufficient arguments to consider them both valid.

Furthermore, some minor discrepancies were also found. For example, only one participant explicitly criticised transparency in the country's judiciary, suggesting that in special cases (for instance, political ones), transparency suffers. While other participants also mentioned the fact that political cases are treated specifically and can, among other things, be associated with miscarriages of justice, no other respondent introduced transparency issues, and many praised the judiciary's transparency in Kuwait. In such cases, the themes that are voiced by a few persons cannot be neglected and should be taken into account as they demonstrate possible issues which are not witnessed or experienced by every participant.

In summary, the presented findings cover the topics of interest to the study and support or advance the findings of the literature review, filling the gaps identified because of the lack of studies devoted to Kuwaiti criminal justice system and criminal-matters SOP. Most of the results do not contradict each other; the discrepancies that are present might be explained by the specifics of qualitative research; namely, by the subjectivity of perceptions and personal experiences. It can be concluded that Kuwaiti's criminal justice system experiences multiple issues, many of which stem from the insufficient SOP in it; in particular, the executive branch holds noticeable power over the judiciary. However, there are numerous efforts to rectify the issue, which employ the reported mechanisms for improvement and the supplementary measures. Also, the specifics of the origins of Kuwaiti legislation might be beneficial for SOP.

## Conclusion

Given the significance of SOP in the judiciary, the lack of research on the topic appears to be a problem. Furthermore, given the signs of the issues in Kuwaiti SOP and criminal justice system, they seem to need more coverage in literature. The present study employed qualitative methodology (in particular, semi-structured interviews) to contribute some evidence related to the topic of SOP in Kuwaiti criminal justice. The results indicate that certain issues are indeed present in the system, many of which are associated with incomplete SOP, but the participants of the study report the efforts that are aimed at promoting SOP with the aim of ensuring the protection of Kuwaiti population. The findings support some of the

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<sup>1</sup> Constitution of Kuwait, 1962, art. 50, 56.

<sup>2</sup> Participant J2.

<sup>3</sup> Participant J3.

conclusions of the literature review while also contributing new data. As one of the few studies on the topic, the present article helps to fill the gaps in modern research.

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