

# Utilising the judiciary to reject the popular will? : legal mobilization after the Arab uprising in Kuwait

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**Legal Mobilization after the Arab Uprising in Kuwait**

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**Abstract**

This study examines the role of the judiciary in the political process after the Arab Uprising, focusing on a Constitutional Court and its judgements in a case where the popular will was rejected via a judicial ruling. In particular, I will analyse a case of Kuwait where the Constitutional Court declared election void and ordered the dissolution of parliament, after the opposition had won a stable majority. This case conjures images of legal mobilization by the regime; however, considering the political context where the government and parliament were in a serious ongoing conflict, the constitutional rulings by the Constitutional Court can be evaluated as a mediator intended to ease the stalemate and prevent a fall into a more serious crisis concurrent with the political upheaval in other Arab countries.

**Keywords:** legal mobilization, judicialization of politics, democratization, Kuwait

**JEL classification:**

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# **Utilising the Judiciary to Reject the Popular Will? Legal Mobilization after the Arab Uprising in Kuwait**

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## **1. Introduction**

### **1-1. Purpose of the study**

This study examines the role of the judiciary in the political process after the Arab Uprising that started at the end of 2010. I focus on a Constitutional Court and its judgments that affected a country's political process and analyse a case where the popular will was rejected via a judicial ruling. In particular, I will analyse a case in Kuwait where the Constitutional Court declared an election void and ordered the dissolution of parliament in June 2012, after the opposition had won a stable majority in the election held in February 2012. The regime in Kuwait allowed for more political space and political activities by the opposition than other Arab countries had before the Arab Uprising. Therefore, it seemed that Kuwait was less affected by the uprising and the opposition believed in the neutrality of the judiciary and respected its judgment. However, after the declaration, the opposition criticised the move as a judicial coup forced by the regime. Since then, they have boycotted elections, deepening the political confrontation with the regime caused by the political instability.

Regarding the role of the judiciary in the process of democratization, there are preceding studies of newly developing democracies which had a regime transition in the third wave of democratization. These studies explore the process of consolidating the constitutionalism and rule of law, and describe the roles of the judiciary, such as legitimizing a new democratic regime; providing compensation for past acts; and strengthening inspection functions to eradicate improprieties, corruption and human rights abuses (Dressel 2012; Ginsburg and Moustafa 2008; Gloppen et. al. 2004; Tam 2013). The literature on Arab countries has just started to examine the role of the judiciary. Authors refer to authoritarian regimes legally mobilizing to maintain their legitimacy, or trying to improve their governance to prevent corruption and human rights abuses in response to outside intervention in the name of democratization assistance (Moustafa 2003; Bellin and Lane 2016).

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The case of Kuwait conjures images of legal mobilization by the regime because of the method and timing of the dissolution of parliament. At the same time, the Constitutional Court of Egypt also declared an election void and ordered the dissolution of the parliament in July 2012. This case was seen as resistance by the judiciary toward the government lead by the Muslim Brotherhood and justification for a military coup. However, we can also assume these cases were forms of judicial activism intended to break through serious political confrontations. In Kuwait, there was no way to resolve the confrontation between the government and the parliament, even after five elections in the six years from 2006 to 2012. Therefore, the action can also be seen as intervention and mediation by an activated judiciary. These cases created more serious conflicts that are still going on. It is difficult and too early to determine their consequences; we need to focus on the impact of judicial rulings on the subsequent political process and watch how things develop.

The concerns of this paper are the background of judicial intervention, the methods used to intervene in the political process under the threat of a regime transition and the impact of judicial intervention on the subsequent political process. Thus, I pose the following question: When and under what circumstances does a judiciary intervene in the political process? To answer this question, I will examine the grounds for judicial rulings executed with legal force and the acceptance of such rulings by actors in a conflict. Using the decree of judicial independence and the power balance between the executive and legislative institutions as my key, I will use the following procedure. First, I will examine the institutional positions of judiciaries—in particular, the structure of the Constitutional Courts and the text of the constitutional rulings. Second, I will describe the changes in the power balance between actors in the political process before and after the declaration of a constitutional ruling. Then, I will evaluate the impact of a judicial ruling that solved a political conflict or caused further political turmoil by examining whether the related actors were subject to it or not, and how they responded thereafter. Finally, I will lay out the implications of this study for further comparative analysis across regions on the role of the judiciary in the process of democratization.

## **1-2. Background of this study**

During the Arab Uprising, the process of regime transition drew attention to the role of judiciaries for the following reasons. The Egyptian judiciary seemed to show that their expected role was the same as that in developing democracies (Hazama

2011). First, they were expected to legitimise the new regime. As in developing democracies, the Egyptian judiciary was also expected to transition from 'legal mobilization' in the authoritarian regime to the 'guardian of the law' in the new regime, and to consolidate the 'rule of law'. Second is election administration in a neutral setting. This means guaranteeing the transparency and fairness of kick-off elections and referendums, which are important procedures in the transition process, by monitoring these processes, and to help legitimise the new regime. Third is legal professionals. This involves giving advice on cases disputing rules in turbulent times, and making out drafts of the constitution and laws for the new regime. Finally, its fourth role, contrary to the three mentioned above, is to determine the backlash to the new authoritarian regime.

Studies on new developing democracies have discussed the role of the judiciary in terms of compensation for past acts after the transition of a regime; authorization for the legitimacy of a new government; and providing checks to prevent corruption, collusion, and abuse of human rights for consolidation of the rule of law and constitutionalism (Gloppen et al. 2004). The changing role of judiciaries due to regime transition has been discussed in terms of the change from justification for an authoritarian regime to institutionalization of democratic values (Sakumoto and Imaizumi 2003; Ginsburg 2003, 2009). However, in terms of the direct impact on the political process, we see the nullification of the 'rule of the game' and its effect, so we need to introduce a new perspective. Although this paper takes the same approach as preceding studies in examining judicial independence, I pay attention to the conditions under which a judiciary intervenes in the political process and has an impact, rather than *how* the judiciary changes in the process of democratization.

### **1-3. Cases in Arab countries**

The Arab Uprising started in Tunisia at the end of 2010. It toppled authoritarian regimes in Tunisia, Egypt, Libya and Yemen. However, the shapes of the new governments are still uncertain and the influences they have on other countries are uneven. Until the end of 2014, Egypt and Kuwait were the only cases where judicial rulings rejected the public will to dissolve the parliament, which was composed of members elected comparatively fairly and competitively.

Egypt and Kuwait have common institutional designs for their judicial systems, although there are many differences between them in terms of regime type, demography and industrial structure (Amin 1985, 274-280; Brown, 1997, 165-179;

2002, 154-157). The reason for this is that the constitution of Kuwait, established in 1962, was based on the constitutional system of Egypt. Most of the framers of the constitution were Egyptians sent by the Nasser administration, established after the revolution of 1952, as members of an advisory group. The constitution of Kuwait was established through discussions in the constituent assembly composed of members elected from male Kuwaiti citizens; they were also influenced by the Arab nationalism coming from Egypt (Sato 2013, 71-72). For the judicial system, Egyptians were not only the framers of the institutional arrangements and legal structures, but also judges until a sufficient number of Kuwaiti legal professional were available. Currently, we can still see Egyptian judges in charge of trials and the supervision of elections; therefore, we can assume that they somehow exert influence on the operations of the judicial system in Kuwait.

In the case of Egypt, the Supreme Council of the Armed Forces (SCAF) ruled in the interim after the Mubarak administration was toppled in February 2011. Faced with anti-SCAF demonstrations, it started the process of transition to civilian rule. The process consisted of three steps: elections of the parliament (house of representatives), election of the Shura Council and presidential elections. In the end, as we know, the Freedom and Justice Party (FJP), the political wing of the Muslim Brotherhood, won and took the initiative to write a new constitution. This caused a conflict between FJP-affiliated Islamists and secular-liberals about who would take the lead in framing the new constitution. Because FJP-affiliated Islamists dominated the legislature and government, the SCAF and secular-liberals searched for a countermeasure.

The Higher Constitutional Court of Egypt declared the election of the house of representatives void the day before the second round of presidential elections on 14 June 2012; that was a counterattack directed at MB-affiliated Islamists who led the writing of the new constitution. According to the judicial ruling, the SCAF dissolved the house of representatives on 16 June, and then amended the interim constitutional declaration to take any authority away from the government and parliament. When President Mohammad Morsi, who assumed the presidency on 30 June, ordered the dissolved parliament to re-assemble on 8 July by executive order, the Higher Constitutional Court made a statement that cancelled this and expressed support for the decisions of the SCAF the next day. Then, the FJP and its affiliated Islamists forced an assembly of the parliament on 10 July; the Higher Constitutional Court then ordered the cancelation of the executive order. President Morsi made a statement following the order and put a period on the turmoil. It can be assumed from the sequence of events

that the judiciary shared common interests with the SCAF. These cases in Egypt show a political battle over the legitimacy of the new regime, and that the new regime failed to authorise its legitimacy through the judiciary, which was expected to legitimise it after the transition.

Under the Morsi administration, the judiciary waged a head-to-head battle with the government. President Morsi replaced members of the SCAF and deprived the SCAF of any authority via an interim constitutional declaration in August. In addition, on 22 November, he declared the absoluteness of any interim constitutional declaration, executive order or legislative decree issued by him over any judicial ruling until the new constitution was established and the parliament called for session. This declaration provoked massive disapproval by judges. President Morsi cancelled it and accelerated the writing of the new constitution. However, most of the judges went on strike and boycotted the supervision of the referendum for the new constitution.<sup>2</sup> After the referendum, the new constitution was enforced by the signature of President Morsi on 26 December; however, a new election of the parliament was never called. The political battle between the president, who held executive and legislative power, and the judiciary continued until 3 July 2013, when Defence Minister Abdel Fattah El-Sisi unseated Morsi, established an interim government and appointed the chief of the Higher Constitutional Court, Adly Mansour, as interim president. Finally, the case of Egypt shows that judges appointed by the former regime not only refused to authorise the regime transition, but also gave a boost to the backlash.

In the case of Kuwait, it has been noted that there was tension between the government (where key cabinet positions are occupied by members of the ruling family) and the parliament (National Assembly). After the electoral reform led by the opposition in July 2006, the conflict escalated. Elections were held four times up to December 2012; therefore, political insecurity and the administration problem were getting worse. For an Arab country, Kuwait has enjoyed a relatively high degree of political freedom, a strong legislature and active opposition; thus, public demonstrations were often held even before the Arab Uprising. After the Mubarak administration was toppled, Kuwait had no public demonstrations, unlike Bahrain. From March 2011, however, some youth groups started to mobilise people to demonstrate against the government.<sup>3</sup> Opposition MPs also ‘shared a ride’ with them

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<sup>2</sup> Nine thousands of Judges in Egypt who belong to the “Judge Club/ *Nādī al-Quḍāʾ*”, occupied 90% of whole judges boycotted supervising of the referendum of new constitution. Therefore, the referendum was hold divided two days on 15 and 22 December 2012. <http://judgesclub.org.eg/نادى-القضاة-2039-قاضيًا-سيقاطعون-الاستفتاء>

<sup>3</sup> Hamad al-Jasser, “Kuwait’s Youth Movement Back Amid Growing Political Divisions,” *Al-Monitor*, 29 August

and escalated the outcry for Prime Minister Nasser Mohammad Al-Sabah to step down. After a financial scandal, the prime minister stepped down in November and the emir dissolved parliament and called a fresh election in December. The election was held in February 2012 and the opposition bloc won two thirds of the seats. The result of the election meant that the opposition bloc gained veto power over any government-sponsored bill and initiative to amend the constitution. The opposition bloc demanded political reforms, including establishing parliamentary government. On 18 June, the emir ordered the suspension of parliament for one month, in accordance with the constitution, to avoid any confusion. Two days later, the Constitutional Court concluded the challenge and declared that it regarded the dissolution of parliament in December 2011 as null and void. Then, it ordered the dissolution of parliament, cancelled all of the sessions and reconvened the assembly from 2009. Considering the timing of the judicial ruling, the case of Kuwait reminded people of legal mobilization by the regime; therefore, the opposition bloc criticised the actions as a judicial coup.

To summarise the cases of Egypt and Kuwait, Egypt shows that the judiciary played a less active role than expected in authorizing the political process to legitimise the regime transition and new regime. Actually, the judges who refused to play this role were appointed by the previous regime. However, it is difficult to consider this as legal mobilization by the previous authoritarian regime because it had already collapsed. Rather, it could be considered as a special case of judicial activism in the transition process, where the judges were independent actors because they lost the stable system of law which they stood on and faced challenges where they had to make judgments in a fluctuating situation. On the other hand, the case of Kuwait can be considered as legal mobilization by the regime because Kuwait had no regime transition. However, judges in Kuwait have not always complied with the government's wishes. They have tended to be rigid and passive, up until the case mentioned above. In the case of Kuwait, it could be assumed that the Constitutional Court played the role of mutual or fair mediator in dealing with the conflict between the government and the opposition in a reasonable manner which avoided armed oppression by examining judicial rulings made by the Constitutional Court in accordance with the political context of Kuwait.

## **2. Judicial system and Constitutional Court in Kuwait**

### **2-1. Judicial system**

The Constitution of Kuwait, enforced in 1962, clearly mentions judicial independence in Article 163.<sup>4</sup> In addition, military tribunals convene only to try crimes by military and security forces, except under martial law. Kuwait was under martial law during the Gulf War, except at that time, judicial power was still exercised in ordinary courts. According to the constitution, the Supreme Judicial Council was established to control personnel affairs and the punitiveness of judges according to the law. The council consists of seven members, including: chief and vice-chief of the Court of Cassation, chief and vice-chief of the Court of Appeal, prosecutor general, chief of the Court of First Instance, and vice-minister of justice. All judges are appointed by the emir based on the advice of the Supreme Judicial Council. This means the emir can influence institutional appointments. Brown (1997, 158-160) pointed out that the judiciary of Kuwait has tended to be reluctant to correspond with the legal mobilization by the regime and has avoided dealing with sensitive political issues. In terms of judicial independence, he pointed out that it has relied on individual judges and they have no way to pursue their collective interests. In the 1990s after the Gulf War, some opposition MPs pushed judicial reform to enforce the judiciary's independence by revising the concerned laws.

### **2-2. The Constitutional Court**

The Constitutional Court of Kuwait was established in 1973 by Article 173 of the constitution. According to the Law in 1973 No. 14, the members of the Constitutional Court consist of five judges who are elected through a secret vote by the members of the Supreme Judicial Council and one reserve member appointed by the emir's decree. Constitutional Court judges are required to have Kuwaiti nationality.

There are three ways to submit a constitutional complaint. The first is through the National Assembly (parliament) or the Council of Ministers (cabinet). The second way is through an ordinary court when a trial needs a constitutional judgment. And third, an individual citizen can submit a complaint, which is unique to Kuwait. In this case, a preliminary review board consisting of three judges from the Constitutional Court screens the constitutional complaint submitted by the individual. If it merits examination, it is referred to the Constitutional Court. People submit cases regarding

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<sup>4</sup> [http://www.pm.gov.kw/en/state\\_Of\\_Kuwait/kuwaitConstitution.jsp](http://www.pm.gov.kw/en/state_Of_Kuwait/kuwaitConstitution.jsp)

parliamentary elections, such as qualification examinations of candidates and complaints against the result of elections.

According to al-Jāsim (2009, 276-329), the Constitutional Court dealt with 286 cases from its establishment in 1973 to 2008. Of the total, 124 were about laws, emir decrees, and cabinet and ministerial orders; 95 were screened by a preliminary review board; 55 were complaints about elections; and 12 called for interpretations of articles of the constitution. The number of submitted constitutional complaints increased rapidly from 1993 because the parliament started reviewing all of the emir's decrees and governmental decisions issued during the suspension from 1986 to 1992 in accordance with the constitution after the parliament was reinstated, and rejected retrospective approval in toto; therefore, the government made constitutional complaints. The Constitutional Court ruled 12 cases unconstitutional and 90 constitutional via dismissal. For the other cases, 5 were exempt from ruling and 13 were refused ruling. Brown (2002, 149-150) characterises the judiciary of Kuwait as an inactive neutrality compared with Egypt. However, we need to examine whose constitutional complaints were ruled constitutional or not to assess the appropriateness of his claim.

Examining the articles of the constitution subjected to review shows one the policy conflicts over time between the government and the parliament that were brought to the Constitutional Court. According to al-Jāsim's (2009) data, we can find the tendency of conflict points over time. For example, in the 1990s, conflict points were: (1) the government's right to tax and budget and (2) the inviolability of public financial institutions and the government's obligation to protect its citizens. Specifically, in terms of (1), the specific issues were the propriety of the budget executed by the government during the suspension of the parliament, and the propriety of taxation on public services to eliminate a budget deficit. For each issue, both the government and parliament requested a constitutional review to enhance and justify their claims in a political situation where the parliament rejected proposals from the government. The government claimed that the constitution authorised it to execute budgets and collect taxes. On the other hand, the parliament claimed that the decisions made by the government deviated from the letter of the constitution. In terms of (2), the specific case related to a new oilfield development, which the government proposed be opened up to foreign capital. The parliament claimed that this was a violation of national property in terms of resource nationalism; therefore, it requested a constitutional review. Consequently, the government relinquished the project partly

because the Constitutional Court ruled it unconstitutional. In the 2000s, the main subject of constitutional review was suffrage, especially for females, submitted by the Lawyers Association. This case arose from a citizen's claim against the decision of the parliament, because the parliament refused female suffrage even though the emir promised to grant it in 1999. As mentioned above, the government, the parliament and citizens submitted constitutional complaints based on their respective positions in a proactive manner. On the other hand, the judicial rulings of the Constitutional Court depended on trends in public opinion rather than reflecting the government's policy. In other words, the government, the parliament and citizens shared a common expectation and assumption that the Constitutional Court was legally rigid and inactive, but maintained its independence.

In terms of political freedom, we can see examples where the Constitutional Court recognised it as positive, although the government limited it. For example, during the constitutional movement in 1989, security forces rushed into a private session (*dīwānīyah*) by order of the government. The Constitutional Court ruled this act unconstitutional because it violated Article 44, which guarantees freedom of private session. Another example is when tribal-based Islamists established the National Party (*Ḥizb al-'Ummah*) in 2005 and the government declared it illegal and arrested its members for violation of the law of assembly. However, in 2007, the Constitutional Court ruled this unconstitutional and ordered the members released from jail.

As a characteristic point in Kuwait, we can see respect for the 'rule of law' in the sense of subjective constitutional rulings. Since the current emir, Sabah al-Ahmad al-Sabah, assumed the throne in 2006, the government has tended to enhance its legal domination (*legale Herrschaft*) in an attempt to prevent corruption. In addition, the emir stated that he would abide by judicial rulings if he faced conviction and reinforced the idea that the ruling family, including the emir, is not exempt from following judicial rulings. The opposition also followed the judicial ruling and tended to conclude any political negotiations with the government, although they did object to it in a case that was dismissed. On the other hand, the enhancement of legal domination brought about feelings about the traditional relationship between the government and some tribal clans. The government had connived with some illegal states caused by tribal customs and nepotism; however, the government imposed drastic changes, triggering a massive protest, and then used security forces to crush the tribes. We can assume that the anti-government demonstration started in tribal areas in 2011, partly because this kind of political backlash of tribes against the government.

### **3. Political process around the dissolution of the parliament in 2012**

The political process from when Emir Sabah took the throne in 2006 to the time around the dissolution of the parliament in 2012 can be characterised as a period of continuous instability. In particular, Prime Minister Nasser Mohammad al-Sabah, appointed by the emir, faced interpellation (*istijwāb*) from opposition MPs many times; this led to the resignation of the cabinet, dissolution of the parliament and five elections in seven years. The opposition MPs had been trying to reduce the political power of the ruling family; therefore, they had been attacking ministers appointed from the ruling family. The opposition MPs targeted Prime Minister Nasser because he had little experience and was expected to become the next crown prince.

The conflict between the government and the parliament (the opposition) was caused by differences in their goals for political reform and economic policy. In terms of political reform, the opposition MPs pushed ahead with electoral reform in 2006. They asked for interpellation to Prime Minister Nasser and ran him out of office. The emir dissolved parliament and called a fresh election; however, the opposition gained public support, and the so-called 'Orange Movement', started by students and youth movements, won a majority in the election held on June 2006. The assembly of 2006 moved political reform forward, including deregulation of the media and assembly. As a consequence, political activities in and out of the parliament were more activated. In particular, the electoral reform awakened and activated political activity by tribal citizens because they make up the majority of voters and the electoral reform improved the disparity in the relative weight of one vote in their favour. They complained about the quality of social services and asked the government to increase their allocation of profits coming from oil exports.

In terms of economic policy, the government preferred to invest surplus revenue in development projects to foster the private sector and create jobs, with an eye towards the post-oil era. On the other hand, the opposition mainly consisted of the new middle class and tribal citizens, who preferred equal allocation of national wealth and pork-barrel policies, and criticised the government's development project as a hotbed of political corruption. This difference in economic policy escalated the conflict between the government and the opposition. The opposition submitted an interpellation to Prime Minister Nasser and ran him out of office, then the emir dissolved parliament and called a fresh election. The election was held in May 2008 under new electoral rules and the opposition won more seats than before. The conflict between the

government and opposition worsened and this series of events was repeated: the parliament was dissolved and an election held in May 2009. However, this one was different because the government succeeded in acquiring a majority of pro-government independent MPs. Although Prime Minister Nasser faced interpellation again, he answered it and passed a vote of confidence in January 2010. It was the first time in Kuwait that a prime minister answered an interpellation and passed a confidence vote.

The assembly of 2009 expected to lose the conflict; however, the opposition shot Prime Minister Nasser a doubtful look regarding financial support for pro-government candidates to win a majority in the election of 2009, and that accelerated vote buying. After a while, the impact of the Arab Uprising came to Kuwait; youth movements such as 'The Fifth Wall/*al-Ṣūr al-Khāmis*' launched public demonstrations. They criticised the lack of efficiency not only in the government but also in the parliament. Soon after, however, the opposition MPs took over for them and demanded Prime Minister Nasser's resignation because of a financial scandal. He could not endure this and stepped down, after which the emir appointed Jabir Mubarak al-Sabah as prime minister and then dissolved the parliament in December 2011. An election was held in February 2012 where the opposition won more than two-thirds of the seats, gaining a stable majority. However, as mentioned above, the Constitutional Court judged the procedure of the dissolution of the parliament unconstitutional, declared the election and assembly void, and ordered the 2009 assembly to reconvene on 20 June 2012.

However, MPs from the 2009 assembly who were re-elected in the election of February 2012 boycotted. Therefore, the emir dissolved the parliament again in October 2012 and then amended the electoral law via a decree. This caused a further boycott by the opposition of the election held in December 2012, and a public demonstration called 'National Dignity/*Karāmat al-Waṭan*' to protest it. The new assembly that started in February 2013 was expected to be stable and pro-government, since most of the opposition had boycotted; however, the Constitutional Court declared the election held in December 2012 void on 16 June 2013. A new election was held in July 2013, but the opposition continued its boycott.

As they were concerned with the political process around constitutional judgments, these cases show that the Constitutional Court changed its attitude to judicial activism. In the first case in June 2012, it is uncertain but it seems that the government asked for a constitutional review of the dissolution procedures of the parliament. The Constitutional Court explained the problem with the procedure and

before new ministers took their oaths of office, called for the dissolution of the parliament as it was in violation of Article 107 of the constitution.<sup>5</sup> It is hard not to feel in this case that the judiciary and the government shared the common view that the assembly of February 2012 was a serious challenge to the regime. On the other hand, the explanation shows that the judges appeared at a loss over how to deal with this matter, but it can be seen that they identified grey areas with the procedures. The second case in 2013 was submitted by lawyers, who complained about the amendment of electoral law by the emir's decree. The opposition expected it to be ruled unconstitutional; however, the Constitutional Court ruled it constitutional, but declared the election of December 2012 void for technical reasons and ordered the parliament dissolved.<sup>6</sup> This case also shows that the judges wracked their brains trying to reconcile the trend in public opinion with the government's intention.

In terms of the role of the Constitutional Court in the political process after the Arab Uprising came to Kuwait, it could be evaluated with the following three points. First, the constitutional ruling in June 2012 shows a change in judicial activism; however, the court maintained its tendency to take public opinion into consideration. It is uncertain whether the Constitutional Court was forced into legal mobilization by the government or not; the change in attitude seems to have been a response to the tendency of the government to enhance its legal domination. In addition, the appointment of members of the Supreme Judicial Council, which has the authority to elect members of the Constitutional Court and to advise the emir on the appointment of judges, has a room to be affected by the intention of the government and emir institutionally. However, judges do not always bend to their will. When the government requested a constitutional review of the procedure for amending electoral law in 2006, the Constitutional Court dismissed the case.

Second, the declaration that the election was void, which followed the government's wishes, could be evaluated as an attempt to avoid falling into a more serious crisis. It meant that the emir dissolved the parliament and suspended it and the constitution, like past experiences from 1976 to 1981 and from 1986 to 1992. Some of the government and the ruling family considered transferring power shortly after the election held in February 2012; however, this was not an option for the emir. The emir and the government needed to find a way to ease the conflict between the government

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<sup>5</sup> "إبطال إجراءات حل المجلس السابق.. والمجلس الحالي باطل" *al-Qabas*, 21 June 2012,

<http://www.islamtimes.org/ar/doc/news/173098/إبطال-إجراءات-حل-المجلس-السابق-والمجلس-الحالي-باطل>

<sup>6</sup> "Kuwait court dissolves parliament" *al-Jazeera*, 16 June 2013,

<http://www.aljazeera.com/news/middleeast/2013/06/201361613712160952.html>

and the parliament because if the emir ordered the suspension of the constitution and the parliament, he took serious political damage; firstly, it fuelled the anger of not only the opposition but also the public and caused serious political instability that required the use of armed force; secondly, he lost face in international society. Under such circumstances, it was appropriate for the judges to make a breakthrough based on the public's expectation of their neutrality.

Third, the opposition finally followed the constitutional rulings, refrained from attacking judges and the judiciary, and respected the current system of laws based on the constitution, although it criticised the first constitutional ruling as a coup by the judiciary at once and boycotted the election. Opposition leaders set the government as a target and attacked it consistently, while they urged the youth organizations not to be extreme and illegal. They still seemed to expect judicial mutuality; however, they lost the option to submit constitutional claims to preserve the status of MPs who had resigned after a constitutional ruling in June 2012. They also lost a bid to cancel the amendment to the electoral law by the emir's decree in October 2012 because a third constitutional ruling closed the case, judging the amendment as constitutional. The opposition has continued its boycott, yet has put no foot in door of the parliament.

#### **4. Conclusion**

The role of the judiciary after the Arab Uprising in Kuwait can be summarised as follows. Considering the political context where the government and parliament (mainly the opposition) were in a serious ongoing conflict, the constitutional rulings by the Constitutional Court can be evaluated as a mediator intended to ease the stalemate and prevent a fall into a more serious crisis. It was a series of responses to satisfy claims from the government and the opposition, who were calling for reforms requiring a change in governmental system, concurrent with the political upheaval in other Arab countries. Since the constitutional rulings were concluded, the parliament has been more cooperative with the government because of the boycott by the opposition, but this does not mean the conflict has been resolved. The government has started to politically oppress the opposition, and the opposition is seeking to use the judiciary as a safeguard against this. In this manner, the judiciary's role deserves the attention of anyone examining developments in the political process.

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