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An Analysis of the Civil Service Disciplinary System of Saudi Arabia and Kuwait: An Islamic Perspective and A Comparative Overview

Abd El-Mahdi Massadeh

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An Analysis of the Civil Service Disciplinary System of Saudi Arabia and Kuwait: An Islamic Perspective and A Comparative Overview

Abd El-Mahdi Massadeh*

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* Associate Professor of Law, Yarmouk University located in Jordan; Head of the Department of Public Administration; and a visiting professor at the University of Virginia Law School. Educational background includes the following: B.A. at Damascus University Law School in 1967; L.L.M. at Cairo University Law School in 1969; Higher Diploma in Public Administration at the United Nations Regional Institute in 1973; and Ph.D. at Wales University School of Law in 1983.

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Due to the fact that many of the sources utilized were in Arabic without English translations, an independent source check was conducted by Ahmad Alawnih of Irbid, Jordan. The *Journal* wishes to extend special recognition to him for his efforts and diligence.

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I. Introduction

The current civil service disciplinary rules are diverse in two Middle East Gulf Countries: Saudi Arabia and Kuwait. This article examines the differences, similarities, and trends between these two legal systems, while exploring the major issues which are illustrative of the fundamental principles of both. The article then reviews the relative merits of each legal system, and it proposes suggestions for maintaining administrative reform and improving efficiency in the civil service.

The legal and social foundations of these civil service disciplinary systems, addressed in Section II, raise several provocative questions. Are Saudi and Kuwaiti disciplinary systems derived solely from Islamic law, or are they developing on another basis? What is the influence of *shari'a*,¹ if any, upon both disciplinary legal systems? What is the response of the authorities in both countries to the difficulties involved in the tension between tradition and modernization?

1. Comment, *Islamic Law and Modern Government: Saudi Arabia Supplements the Shari'a to Regulate Development*, 18 COLUM. J. TRANSNAT'L L. 413, 416-17 (1979) (authored by Bryant W. Seaman) [hereinafter Seaman]. See also 3 THE MODERN SAUDI DIGEST 417 (1972) [hereinafter SAUDI DIGEST].

The word *shari'a* is the name given to the totality of God's commandments, comprising the moral and practical injunctions embodied in the *Quran* and the traditions of the Prophet, as well as other legal rules derived from sources complementary to these two principal sources. In Islamic tradition, the '*shari'a*' assumes the central function of guiding communal order and ethics.

Id.

The constitutional structure and powers of disciplinary and managerial authorities are the main concern of Section III. Official offenses and disciplinary penalties are explained; interplay between social habits and moral rules, on the one hand, and disciplinary legal rules and penalties, on the other hand, are examined. Must civil service disciplinary penalties be restricted to offenses related to work, or should penalties be imposed on officials acting as ordinary citizens in daily life? This question is answered in light of Section II.

Section IV deals with the final major issue involved in the comparison. What are the procedural safeguards and channels of review available for civil servants in both disciplinary systems? Notwithstanding that these legal systems operate in relatively newly-established developing countries, there are set legal rules which can guide disciplinary authorities.

Section V concludes that efforts have been made to improve the civil service in these countries and to adapt disciplinary rules to the requirements of the workplace. Meanwhile, social, constitutional, legal, and managerial obstacles hinder workplace efficiency and limit improvements in these disciplinary legal systems. This article suggests that defects in both legal systems might be cured through planned intervention, based on the social values and heritages of the societies in both countries, which would enhance social developments through legislative and managerial changes.

II. Constitutional and Legal Backgrounds

A. Saudi Arabia

1. *Introduction.*—The Islamic “Sunni” Kingdom of Saudi Arabia² (Kingdom) follows the *hanbali* school³ of Islamic jurisprudence. This classical school of thought firmly adheres to the directives and injunctions embodied in the holy *Koran* and *Sunnah*.⁴ The

2. The Kingdom was formally established in 1932. Seaman, *supra* note 1, at 425-26. *Shaykh* Mohammed Ibn Abdul al-Wahhab and his religious movement, and *imam* Mohammed Ibn Saud, “established an alliance in 1744 A.D. in accordance with the ‘hanbali’ doctrine that the *ulama* should join forces with those in political power (Umara) to create a true Islamic society.” *Id.* “This alliance of Wahhabi religious fervor with al-Saud expansionism was an essential element in the forces which led to the unification of most of the Arabian peninsula as the Kingdom of Saudi Arabia . . .” *Id.* at 423-24.

3. For information concerning this school of Islamic jurisprudence, see Makdisi, *The Significance of the Sunni Schools of Law in Islamic Religious History*, 10 INT. J. OF MIDDLE E. STUD. 1-8 (1979). See also Humphreys, *Islam and Political Values In Saudi Arabia, Egypt and Syria*, 33 MIDDLE E. J. 1 (1979).

4. According to this school, in the early stage of Islam *ijma* (i.e., full agreement between Muslim jurists concerning a case) is confined to opinions given by the Companions. The Companions were disciples of the Prophet Mohammed. After Mohammed’s death, they continued to follow the *Quran* (*Koran*) and *Sunnah* as a basis for religion and government. In stages following that early period of Islam, *ulama* (i.e., full agreement) concerning these doctrines failed to answer the new arising questions of life. “This restrictive interpretation of consensus in its classical technical sense inhibits its use as a source of law responsive to the needs of

Koran is the constitution of Muslims; no secular authority can enact laws against the will of God. Followers of the *hanbali* school believe that God has revealed to "His Prophet," Mohammed, all the rules which are suitable and necessary for regulating daily conduct. These rules regulate governmental affairs and activities, as well as all civil law matters and religious duties.⁵

From the inception of the establishment of Saudi Arabia, its founder, King Abdul Aziz, was faced by this rigid interpretation of the rules of Islam.⁶ In fact, Muslim conservatives concluded their 1926 conference in Mecca by declaring that secular legislation was both a fiction and a device of the devil, and it had no basis either in the *Koran* or in the traditions of Islam. They also maintained that taxes and technological inventions enjoyed no support from Islam.⁷

Therefore, from the very beginning, King Abdul Aziz proposed to govern the country according to the opinions of the *hanbali* school. He maintained that his rule would be based on the principles of Islam, including consultation with selected notables, concerning the conduct of the new state's affairs.⁸ In implementing this goal, *shari'a* courts were established to resolve individual and government disputes according to Islamic rules embodied in the *Koran* and *Sunnah*.⁹

Confrontation between the conservative *ikhwan*¹⁰ and Abdul Aziz's government was inevitable. The *ikhwan* had remained steadfast against the regulation of the Saudi Kingdom's affairs by

Saudi Arabia's changing society." Seaman, *supra* note 1, at 419.

5. *Id.* at 417.

6. Concerning the influence of Muslim conservatives on government activities in Saudi Arabia, see Bligh, *The Saudi Religious Elite (Ulama) as Participant in the Political System of the Kingdom*, 17 INT. J. OF MIDDLE E. STUD. 37-50 (1985); Edens, *The Anatomy of the Saudi Revolution*, 5 INT. J. MIDDLE E. STUD. 50-64 (1974); Kechichian, *The Role of the Ulama in the Politics of an Islamic State: The Case of Saudi Arabia*, 18 INT. J. OF MIDDLE E. STUD. 53-71 (1986); Comment, *The Influence of Islamic Law on Contemporary Middle Eastern Legal Systems: The Formation and Binding Force of Contracts*, 9 COLUM. J. TRANSNAT'L L. 384 (1970) (authored by P. Nicholas Kourides).

7. Radical Wahhabi's are called *ikhwan* (i.e., brothers in Islam). They conferred in Mecca in 1926. SAUDI DIGEST, *supra* note 1, at 256.

8. In his first decree, entitled "Fundamental Instructions of the Hijaz, 1926," King Abdul Aziz stated that he was bound by the rules of *shari'a*. He would govern Hijaz according to the *Koran* and *Sunnah*. Rules of *shari'a* would be applied to all criminal, civil, and commercial cases. *Id.* "A Consultative Council was established by the Organic Instructions, comprised of a viceroy, his advisors and six notables designated by the king." See Seaman, *supra* note 1, at 427.

9. Seaman, *supra* note 1, at 439-40. In his first decree, above named, King Abdul Aziz "unif[ie]d the legal system under the Hanbali school." *Shari'a* courts were given jurisdiction over all disputes regardless of their subject matter or parties involved in them. *Id.* See also SAUDI DIGEST, *supra* note 1, at 250-55.

10. *Ikhwan* means "Muslim brethren." The word refers to radical Muslims as well as to Wahhabism, a conservative Sunni Islamic Sect. In 1902 when Emir Abdul-Aziz was proclaimed as Imam, the religious head in the Wahhabi movement, he established the "Ikhwan Association" which consisted of extreme Muslims followers during that movement. SAUDI DIGEST, *supra* note 1, at 256. The Ikhwan Association may have inspired the Ikhwan parties in Egypt in the 1930s, and presently it is found in various Arab countries.

the government. King Abdul Aziz reacted strongly by suppressing his rivals. He put an end to the overwhelming traditional power of the *ikhwan*.¹¹ The King became the paramount authority in the realm,¹² and he turned his attention to uniting the country under his sole leadership.¹³ Rules were enacted to regulate the affairs of the state and to act in harmony with the arising needs of the Saudi society.¹⁴ Also, new rules were enacted to give solutions to those questions which were addressed in neither the *Koran* nor the *Sunnah*.¹⁵ However, fundamental directives embodied in these doctrines remained intact.¹⁶ In the near future, it is highly unlikely that the government will enact laws that are contrary to values firmly held by the general public. Social heritage must be present in the mind of government when it enacts rules regulating the affairs of the Kingdom.¹⁷

2. *Powers of the State*.—In Saudi Arabia, the monarch or king is the sovereign authority. The monarch's position combines legislative, executive, and judicial powers.¹⁸ There is no constitution¹⁹ through which state powers and citizens' rights are determined; the Council of Ministers' Regulation No. 38 of 1958 functions as the fundamental enactment of the Kingdom.²⁰ Besides fundamental rules such as principles of equality and consultation embodied in *shari'a*,²¹ Minister's Regulation No. 38 provides provisions relevant

11. Their leader Faisal Al-Duwaish and some other leaders of the rebellion were put into prison and severely punished. See SAUDI DIGEST, *supra* note 1, at 256.

12. Abd El-Fatah Hassan, Lectures on Administrative Law 29-33 (1974). See also Seaman, *supra* note 1, at 425-30.

13. "In 1927 Abdul Aziz was crowned king of the realm of Hijaz and Nejd and its dependencies In 1932 Abdul Aziz proclaimed himself king of the unified Kingdom of Saudi Arabia." See Seaman, *supra* note 1, at 425-26. See also SAUDI DIGEST, *supra* note 1, at 256-57.

14. *Id.* at 258-59.

15. *Id.* at 257. These matters are called *al-masalih al-mursala* (unrestricted interest). Khadduri, *The Maslaha* (Public Interest), and *Illa* (Cause). In *Islamic Law*, 12 N.Y.U. J. INT'L L. & POL. 213-14 (1979). This term involves interests that are neither prohibited nor conflicting with the *shari'a*. For further details, see Seaman, *supra* note 1, at 443.

16. SAUDI DIGEST, *supra* note 1, at 256, 258.

17. Seaman, *supra* note 1, at 481. It has been pointed out that:

[T]he future strength and stability of Saudi Arabia will depend to a great extent upon the degree to which the Kingdom's leaders are able to continue to devise contemporary adaptations of the *shari'a* and traditional institutions to retain the Islamic character of the changing society and thus the respect of the Saudi people.

Id. For similar remarks, see also SAUDI DIGEST, *supra* note 1, at 249, 254, 255.

18. Abd El-Fatah Hassan, *supra* note 12, at 29-33.

19. Seaman, *supra* note 1, at 430. Two attempts have been made to enact a constitution for Saudi Arabia, but they have failed. The first attempt was in 1960, and the second was in 1962. Failure of these attempts was "believed [to be] that . . . [they] . . . opened up an area of conflict between conservative and liberal elements which was perceived as having potentially divisive consequences for the country." *Id.* at 430.

20. Abd El-Fatah Hassan, *supra* note 12, at 25.

21. The Consultation Principles is based on the *Koran*. See KORAN 42:32 (1987).

to constitutional issues.²² The king's powers, powers of the Council of Ministers, and the structure of the Executive are defined in the named Regulation.²³

Legislative power is vested in both the king and in the Council of Ministers (Council).²⁴ Regulations are issued by the king by means of royal decrees and by decisions made by the Council of Ministers.²⁵ Since there is no elected legislative body to promulgate necessary legislative enactments,²⁶ the king and the Council of Ministers carry out all legislative functions.²⁷

Executive power is also vested in the Council of Ministers.²⁸ Its head is the king, and the Council's important decisions must be endorsed by the king.²⁹ The Council of Ministers issues directives necessary for the management of government.³⁰ In addition, it has, under the authority of the king, power to supervise government activities and to enhance efficiency in the civil service.³¹

Under the judicial power, citizens' disputes are heard by the *shari'a* courts³² whose vital judgments must be approved by the king.³³ Citizens' claims may also be raised before royal family members who have the power to adjudicate these claims or refer them either to courts or to other administrative authorities.³⁴ However, disputes involving government activities are not within the jurisdiction of the *shari'a* court.³⁵ These disputes are determined by a griev-

22. Abd El-Fatah Hassan, *supra* note 12, at 25.

23. *Id.* at 25-28.

24. *Id.* at 29. The Council of Ministers was first established in 1931 under the name "The Consultative Council." In 1953 a ministerial system was institutionalized when King Abdul Aziz ". . . creat[ed] a Council of Ministers at the national level." See Seaman, *supra* note 1, at 427. See also El-Nafesah, *Some Principles Governing The Saudi Civil Service System*, 12 PUB. ADMIN. 5, 7 (1966).

25. Abd El-Fatah Hassan, *supra* note 12, at 29.

26. Seaman, *supra* note 1, at 429-30.

27. Abd El-Fatah Hassan, *supra* note 12, at 29.

28. *Id.* at 33-37. For historical developments of the named Council, see Seaman, *supra* note 1, at 427-28.

29. *Id.*

30. Abd El-Fatah Hassan, *supra* note 12, at 28.

31. See *infra* note 77.

32. SAUDI DIGEST, *supra* note 1, at 250-55.

33. *Id.* at 254.

34. The king supervises the judiciary as the supreme judge in the Kingdom. Cases may be brought before the king for a determination. This determination may be arrived at after consultation with the assistants of *ulama*. *Id.* at 256. Also, *umara* (*i.e.*, governors of the different regions of the kingdom) may also determine disputes of citizens if there are no courts in their areas. *Id.* at 255.

35. Since 1967 *shari'a* courts have been prevented from reviewing acts of public administration. Royal Order No. 20941, 1967. King Khalid Abdul Aziz issued this Order as a consequence of a dispute raised by a contractor against the ministry of health. The case was brought before the *shari'a* grand court in Riyadh, and the director general of the ministry of health was summoned and ordered to respond to the claimant's claim under oath. As a result, the king ordered his chief judge to instruct the *shari'a* court to refrain from adjudicating cases involving government activities. Abd El-Fatah Hassan, *supra* notes 12 & 13, at 319-20.

ances board which is directly connected with the king.³⁶

3. *Civil Service and Disciplinary Policies: Characteristics and Developments.*—Immediately upon coming into power, King Abdul Aziz directed³⁷ civil servants to remain impartial. He ordered them to follow the directions of their superiors³⁸ and required them not to interfere in any activities other than their official duties. Severe penalties were imposed on officials who committed certain offenses that were contrary to proper conduct and prevailing values.³⁹ Such punishments were publicized⁴⁰ so that other officials might be deterred from committing similar offenses.

These new civil service duties and disciplinary rules were compatible with the social values and Islamic heritages.⁴¹ Though the Saudi government has enacted civil service and disciplinary regulations influenced by the Egyptian experience,⁴² it has also maintained that the civil service enactments must find their justifications in Islamic law and its heritage.⁴³

Throughout its history, the Saudi government has enacted various civil service regulations and other related enactments⁴⁴ with common characteristics. Civil service enactments have traditionally disqualified persons who committed acts of misconduct from appointment to the civil service.⁴⁵ Civil service rules indicate that acts of

36. See *infra* text accompanying notes 119-38.

37. Directive issued in *Um el Qura*, issue no. 1 on 2.12. (1924), cited in El-Nafesah, *supra* note 24, at 6.

38. This legal and formal obligation can be justified by the provisions of the holy *Koran*. See KORAN, *supra* note 21, 4:59. In his article, El-Nafesah maintained that disciplinary penalties were imposed by the Prophet Mohammed on official offenders. El-Nafesah, *supra* note 24, at 5-6.

Also, the most important enactments are the following: Civil Service Regulation No. 49, 1977; Civil Servants' Disciplinary System Regulation No. M/7, 1971; Grievances Board Regulation No. M/51, 1985; and The Control and Investigation Agency Instructions issued by the prime minister under No. 13136/3/R, 1972.

39. Royal Order No. 43, 1957, arts. 1, 2-3, 5, stated that officials who accept bribes, abuse their authority, or intentionally neglect their duties could be jailed for a maximum of ten years.

40. El-Nafesah, *supra* note 24, at 6.

41. El-Dimyasi, *The General Characteristics of the Saudi Civil Service Disciplinary System*, 19 PUBLIC ADMINISTRATION 249 (1976). Concerning the influence of the *shari'a* on the Saudi legal system and the government's approach to its development. See also Brand, *Aspects of Saudi Arabian Law and Practice*, 9 B.C. INT'L & COMP. L. REV. 1 (1986); Rahman, *Towards Reformulating the Methodology of Islamic Law*, 12 N.U.U. J. INT'L L. & POL. 219 (1979); Sfeir, *The Saudi Approach to Law Reform*, 36 AM. J. COMP. L. 729 (1988); Yamani, *The Eternal Shari'a*, 12 N.Y.U. J. INT'L L. & POL. 205 (1979).

42. See *infra* note 53 and accompanying text.

43. See the preamble to the Civil Servants' Disciplinary System Regulation No. M/7, 10, 1971; El-Nafesah, *Administrative Disciplinary Action*, 16 PUB. ADMIN. 5 (1974).

44. See *infra* note 53.

45. The Civil Service Regulation No. 49, 1977, arts. 4d, 4f, 4g. This Regulation prevents those who committed acts of misconduct; or those who were jailed as a result of accusation or improper behavior; or those who were dismissed from the civil service, from appointment to public offices.

public employees constitute official offenses even if they were committed by officials in their daily, private life.⁴⁶ Misconduct of public officials was considered an offense for which the actor must be penalized even if it was not directly related to official duties and job requirements.⁴⁷ Furthermore, officials were disciplined for acts of negligence which caused embarrassment to the government or upset the Muslims.⁴⁸ In addition, institutions⁴⁹ dealing with important government activities and positions⁵⁰ were established under names drawn from Islamic heritage. Such institutions received the public attention and countenance of clergymen holding religious positions of Call and Guidance⁵¹ within the Saudi Kingdom. That is to say, civil service rules have coincided with religious mores adhered to by the Muslims, who constitute the vast majority of the country's population.⁵²

Recently, the government has imported foreign civil service experiments, such as the Civil Service Board and the Contral and Investigation Agency, and it has tried to adapt them to the citizens' needs and social values. Progress has been made, and civil service and disciplinary rules now in force, appear to be similar to the more secular rules that have been applicable in neighboring countries.⁵³ Duties and responsibilities of public officials are stated in a broad way to encompass unforeseen needs and contingencies. Civil service powers are sufficiently broad to enable them to maintain job efficiency and administrative reform.

Nevertheless, progress remains superficial unless it is accompanied by change based on planned social development. Efforts must be oriented towards the attitudes and behavior of civil servants. Chang-

46. El-Dimyasi, *supra* note 41, at 251-53.

47. *Id.*

48. After being found negligent in carrying out his duties, a customs officer was penalized. This accused official had allowed rugs, usually used for prayer, to enter Saudi Arabia with indecent pictures upon them. The Disciplinary Agency Case No. 45, 1974, cited in Mousa, *Disciplinary Offenses in Practice and Theory*, 42 PUB. ADMIN., 158 (1982). Mousa referred to the repealed Civil Service Regulations No. 42, 1971, arts. 82-85. *Id.* at 145-46.

49. The Grievances Board, set up to determine government disputes, borrows its name from Islamic history. The present Preamble to the Grievances Board Regulation clearly referred to that Islamic experience by indicating that the Grievances Board was built upon Islamic heritages and past experience. See Preamble to The Grievances Board Regulation No. M/51, 1985.

50. Governors of the State are called *umara*. The words *shaykhs* and *ulama* usually refer to judges and jurists, respectively. These words and other similar words are used in treatises and articles discussing Islamic Law. See also *supra* note 15.

51. Officials responsible for Call and Guidance are usually called *matawah*. Their responsibility is to enforce Islamic duties and to maintain Islamic values with regard to proper behavior. See SAUDI DIGEST, *supra* note 1, at 256.

52. El-Dimyasi, *supra* note 41, at 25. Tribal traditions also influence government decisions. It has been rightly pointed out that some of the obsolete customs, as well as extreme opinions of the *Ikhwan*, have been obstacles for change and hinderances toward rapid development. SAUDI DIGEST, *supra* note 1, at 259.

53. Compare enactments cited in *supra* note 38 with similar Egyptian enactments (*i.e.*, The Civil Service Employees Act No. 47, 1978; The Administrative Deputy and Disciplinary Proceedings Act, No. 117, 1958; and The Council of the State Act No. 47, 1972).

ing common attitudes toward work and the promotion of creativity within the civil service, is a major concern in developing countries. Pre-service training programs and on-the-job training may serve as means for achieving this vital purpose. Furthermore, managers must be made fully aware of these prerequisites. Managers must be carefully chosen and qualified in their managerial duties. They must take the lead in affecting social change by motivating their subordinates through new methods of management which are capable of creating a healthy environment within the civil service. Through these means, officials may be influenced to accept the changes and new ideas that are crucial during this transformation period.

B. Kuwait

1. *Constitutional Introduction.*—The State of Kuwait was established and has developed in a different manner from the Saudi State. Unlike Saudi Arabia, Kuwait is a “Sunni” Muslim state⁵⁴ with its population being Muslim. However, Kuwait has not been influenced by the extreme version of Islam followed by the Wahabbi movement. There has been no obligation on the state’s part to adhere firmly to all the rules embodied in the *Koran* and *Sunnah*, as is the situation in Saudi Arabia.

Additionally, unlike the Saudi State, Kuwait does have a constituent constitution. Kuwait’s Constitution⁵⁵ dictates that Islam’s law is a basic source for legislation.⁵⁶ Accordingly, there is no prohibition on the state to enact legislation through elected representatives of the people. This Constitution defines the powers of the state⁵⁷ and guarantees fundamental citizens’ rights.⁵⁸ It provides for an elected national assembly responsible for the legislative function of the state.⁵⁹ Civil service matters are regulated by acts enacted by the legislature.⁶⁰ Government activities are carried out under both the authority of the legislature⁶¹ and the supervision of the judiciary.⁶²

54. Seaman, *supra* note 1, at 414 & 417; Sfeir, *The Saudi Approach to Law Reform*, 36 AM. J. COMP. L. 729, 751-52 (1988). See also The Wash. Post, April 21, 1991, at A21.

55. KUWAITI CONST. (1962).

56. *Id.* art. 2. This Article has stated that Islamic Law is a basic source for legislation, but it does not state that it is the sole source for legislation. The Preamble of the Kuwaiti Constitution has explained this provision by saying that it allows the state to enact legislation that is suitable for arising needs and developments. Notwithstanding that that *shari'a* contains provisions for criminal cases, the Preamble goes on to say that this Article of the Constitution enables the legislature to issue criminal laws containing modern provisions to satisfy new circumstances. See, 5 KUWAITI LEGISLATION’S COLLECTION 63 (1981).

57. KUWAITI CONST., art. 5.

58. *Id.* arts. 27-49.

59. *Id.* arts. 79, 80.

60. *Id.* art. 26.

61. *Id.* arts. 98-101.

62. *Id.* art. 169.

2. *Civil Service and Disciplinary Policies: Characteristics and Developments.*—Kuwait's civil service rules and its disciplinary system⁶³ are based primarily on its social heritage⁶⁴ and political environment.⁶⁵ Although disciplinary and civil service rules have been influenced by other experiences,⁶⁶ these two items are the most influential. Improper acts of civil servants (*i.e.*, drinking alcohol, lying, and not praying at the appropriate times) are considered official offenses,⁶⁷ even if they have been committed outside the workplace and even if they have no relevance to job performance. Prevailing values⁶⁸ are to be taken into consideration when an official discharges his formal duties.

The civil service act presently in force⁶⁹ has been a set-back to the civil service system which was established by an act of Parliament.⁷⁰ Guarantees that once provided for civil servants in the legal system, have been curtailed.⁷¹ Consequently, job security and job performance may be adversely affected.⁷² That is to say, civil service affairs should be regulated by the legislature, without the influence of the executive. The legislature must not equip the former authority

63. Today, disciplinary actions are governed by the provisions of The Civil Service Act No. 15, 1979, arts. 27-32, issued on April 4, 1979. Detailed provisions concerning disciplinary actions are embodied in The Civil Service Regulation No. 49, 1977, arts. 54-81, made in pursuance of Article 1 of the above stated Act.

64. The Civil Service Act No. 15, 1979, arts. 21, 24, 25.

65. *Id.* arts. 1-5.

66. The Civil Service Law and the Kuwaiti legal system clearly have been influenced by the legal systems of both Egypt and the United Kingdom. The influence of these competing legal systems is found within the express provisions of Articles 169 and 171 of the Kuwaiti Constitution. Following the British pattern of judicial review of administrative action (*i.e.*, the Unitary judicial system of common law countries) Article 169 of the Kuwaiti Constitution states "that government activities could be reviewed before a special court (of the judiciary) or before a panel of a court of justice as it may be determined by an Act of the legislature." On the other hand, following the Egyptian and the French model of judicial review of administrative action, Article 171 states that "a council of the State (*i.e.*, administrative courts independent of ordinary courts and directly connected with the head of the executive) may be established by an Act of Parliament." See also, the Constitutional Court Act No. 14, 1973. This Act has been drawn in light of an Egyptian Act entitled The High Court, No. 81 of 1969, according to which constitutional claims against acts of parliament could be reviewed before this Constitutional Court (*i.e.*, The High Court).

See also the Kuwaiti Civil Service Act No. 7, 1960. This Act was influenced by similar civil service laws in Egypt. However, the Kuwaiti state has not yet adopted a bilateral judicial system in which government disputes must be reviewed before a separate set of administrative courts. Government disputes are solved by ordinary courts of justice. See *infra* text accompanying notes 189-92.

67. The Civil Service Act, No. 15, 1979, arts. 21, 24, 25.

68. See KUWAITI CONST. 69 (1962).

69. The Civil Service Act, No. 15, 1979.

70. The repealed Civil Service Act is Act No. 7, 1960. See *infra* note 71, at 161.

71. See M. AFIFI AND B. SALIH, THE DISCIPLINARY SYSTEM: ITS EFFECTIVENESS AND GUARANTEES — A COMPARATIVE STUDY OF CIVIL SERVICE SYSTEMS OF EGYPT, KUWAIT AND FOREIGN COUNTRIES 352-54 & 481-82 (1982) [hereinafter AFIFI].

72. See *infra* note 161 and accompanying text. It would seem that the Kuwaiti state has tried to abridge the constitution and the rights guaranteed by it. Parliament was dissolved in 1986, and the government exercised excessive power against its opponents. See, The Wash. Post, *supra* note 54, at A21.

with a plenary power at the expense of the civil servants and the public interest.

III. Disciplinary and Managerial Authorities: Structure and Power

A. Saudi Arabia

1. Managerial and Supervisory Authorities

a. *The Civil Service Board.*—In Saudi Arabia, civil service policies are determined by the Civil Service Board (CSB) according to the provisions of the civil service regulation.⁷³ In 1980 a Civil Service Board Regulation which defined the duties and responsibilities of the CSB was enacted.⁷⁴ Its chairman is a deputy prime minister,⁷⁵ while its members are the following: the head of the civil service commission, three ministers appointed by a royal order based on a recommendation of the chairman of the CSB, and three other members — experts in civil service matters — appointed by the King.⁷⁶

The CSB recommends civil service regulation proposals to be enacted by the appropriate authority.⁷⁷ It enacts secondary regulations to put into effect the provisions of the enabling regulations.⁷⁸ The CSB supervises implementation of civil service regulations and relevant civil service rules.⁷⁹ It has authority to implement rules that are necessary for maintaining a merit system⁸⁰ and an efficiently functioning government.⁸¹ Job classification⁸² and establishment of on-the-job training⁸³ are also within the main duties of the Civil Service Board.

This CSB bears the primary responsibility for maintaining administrative development in Saudi Arabia. Important authorities and specialized committees have close ties⁸⁴ with the CSB, which enables it to closely supervise the implementation of civil service policies. The authority invested to it enables it to carry out its immense duties with remarkable success; however, it is advisable for the CSB not to be involved in minute details⁸⁵ of the civil service. General policy

73. The Civil Service Act No. 15, 1979, art. 39.

74. This Regulation was issued by Royal Decree No. M/48, 1980. It was enacted in pursuance of the provision of Article 39 of The Civil Service Regulation No. 49, 1977.

75. The Civil Service Regulation No. 49, 1977, art. 5.

76. *Id.* art. 5.

77. *Id.* art. 9/A.

78. *Id.* art. 9/B.

79. *Id.* art. 10/A.

80. *Id.* art. 10/E.

81. *Id.* art. 9/C, 2, 4.

82. *Id.* art. 10/B, f.

83. *Id.* art. 9/C-2.

84. *See id.* arts. 3; 9/C-3; 9/C-4. The Civil Service Commission, The Institute of Public Administration, and The Control and Investigation Agency are only some of the agencies which have close relations with the Civil Service Board. *Id.*

85. One of the characteristics of the Saudi Civil Service System is the formality and

guidelines accompanied by a broad supervisory role helps the Civil Service Board to maintain an efficient civil service system.

b. The Control and Investigation Agency.—Established⁸⁶ in 1974, the Control and Investigation Agency (Agency) was created as a counterpart to the disciplinary agency established under the same enabling enactment.⁸⁷ Both of these agencies were responsible for control and investigation,⁸⁸ as well as for disciplinary matters⁸⁹ within the civil service. However, matters previously determined by the disciplinary agency have since been transferred⁹⁰ to the Grievances Board (Board),⁹¹ and the disciplinary agency has been abolished.⁹² Meanwhile, investigation and control functions have remained under the responsibility of the Control and Investigation Agency.⁹³

As its name implies, this agency discharges two important functions.⁹⁴ First, it exercises overall supervision of the administrative and financial activities⁹⁵ of civil servants. The Agency exercises its controlling power through officials of its control division. Findings of this division are reported to the Agency head.⁹⁶ Second, when further inquiry is needed, the Agency head may order an investigation to be completed by an official in the agency's investigative division.⁹⁷

Certain procedural safeguards exist to protect civil servants from unfair treatment. The Agency's head must contact the minister of the accused official's department in order to coordinate any investigation.⁹⁸ Investigations also must be carried out in the presence of the accused's immediate supervisor.⁹⁹ Inquiries outside the workplace must be carried out by the security authorities, not by the Agency.¹⁰⁰ For instance, inspection of the accused's place of residence is carried out by the respective authority in the presence of a

detailed rules. See RULES AND INSTRUCTIONS; QUESTIONS AND ANSWERS ANNEXED TO THE CIVIL SERVICE REGULATION (1st Collection, 2nd ed. 1986) [hereinafter INSTRUCTIONS].

86. It was established in pursuance of the provisions of the Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 1.

87. *Id.* art. 14.

88. *Id.* arts. 2-13.

89. *Id.* arts. 15-30.

90. Royal Decree No. M/51, 1985, art. 4. The Grievances Board Regulation No. M/51, 1985, was issued by this decree.

91. See *infra* text accompanying notes 127-35.

92. Royal Decree No. M/51, 1985, art. 5.

93. *Id.* arts. 2, 3.

94. This agency is subdivided into two fundamental divisions: control and investigation. See The Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 3.

95. *Id.* art. 5.

96. *Id.* art. 6.

97. *Id.* art. 7.

98. *Id.* art. 8.

99. *Id.*

100. *Id.* art. 9.

representative of the named agency.¹⁰¹ Also, serious accusations which may require dismissal of the accused are referred by the Agency to the Grievances Board for determination of a suitable penalty.¹⁰²

To conclude, the Agency has had a crucial role in the sphere of the civil service. It supervises and investigates official activities. It may also report its findings to the Grievances Board or to the accused official's minister for further action. This is to say, the Agency can investigate and prosecute, but it can not impose penalties on civil servant offenders. Disciplinary penalties are imposed only by the respective disciplinary authorities.

2. *Disciplinary Authorities*

a. *The Minister's Disciplinary Power.*—The Saudi Civil Service system confers certain disciplinary powers¹⁰³ on ministers and heads of independent public authorities,¹⁰⁴ which enable them to maintain their agencies' policies.¹⁰⁵ Disobedience¹⁰⁶ is a grave offense that may result in severe penalties such as the following: caution, reprimand, reduction in salary, an "annual salary increase" delay, or dismissal.¹⁰⁷ For example, officials are barred from criticizing their superior's civil service policies. Specifically, no government policy may be scrutinized by civil servants.¹⁰⁸ Civil servants are also required to behave properly¹⁰⁹ and to refrain from abusing their powers.¹¹⁰

The civil service regulation empowered the minister to impose any of the above stated¹¹¹ penalties except dismissal.¹¹² There is no stated provision in any of the relevant regulations that directly con-

101. *Id.*

102. *Id.* art. 17.

103. *Id.* art. 35. *See also* The Civil Service Regulation No. 49, 1977, art. 32.

104. The following disciplinary penalties may be imposed on civil servants holding grade 10 and below: caution, reprimand, reduction in salary, an "annual salary increase" delay, or dismissal. High ranking officials of grade 11 and above may be disciplined by one of the following penalties: caution, an "annual salary increase" delay, or dismissal. *See* Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 32. Senior officials include the deputy minister, the assistant deputy minister, and directors holding grade 11 and above. *See* INSTRUCTIONS, *supra* note 85, arts. 6, 6-1.

105. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 35. *See also*, The Civil Service Regulation No. 49, 1977, art. 32.

106. *Id.* art. 11, c.

107. *See supra* note 104.

108. The Civil Service Regulation No. 49, 1977, arts. 11, c; 12, e. *See also* INSTRUCTION, *supra* note 85, arts. 11, 1; The Civil Service Regulation No. 49, 1977, art. 39.

109. The Civil Service Regulation No. 49, 1977, art. 11, a. This article expressly states that officials must behave properly whether inside or outside the work environment.

110. *Id.* art. 12, a. Accepting bribes and gifts are also considered acts of misconduct. *Id.* arts. 12, c; 12, d.

111. *Supra* note 104.

112. The Civil Service Regulation No. 49, 1977, art. 35.

fers on superiors, other than the minister, the power to impose penalties on subordinate officials. However, the civil service regulations do empower the minister to delegate authority.¹¹³ Based on this authorization, deputy ministers have been empowered to discharge any ministerial function except functions not delegated by the minister.¹¹⁴ The minister may also delegate in writing¹¹⁵ certain functions to other senior officials.¹¹⁶ Accordingly, disciplinary powers may be formally delegated by the minister if desired. To conclude, the Saudi civil service system confers on the minister very wide disciplinary powers. It is hoped that these powers will not be abused.

b. The Grievances Board's Disciplinary Powers.—The Grievances Board (Board) was established in 1954¹¹⁷ and was authorized to make recommendations concerning matters within its jurisdiction.¹¹⁸ However, these recommendations could not be implemented unless they were approved by the appropriate minister.¹¹⁹ Since 1985 the Board has been empowered to make final decisions concerning subjects within its jurisdiction.¹²⁰ Disciplinary cases¹²¹ are among the government disputes¹²² that are adjudicated by the Grievances Board.¹²³

Assistant councilors, councilors, an assistant deputy head, and a deputy head discharge the duties of the Board under the authority of the Board's head.¹²⁴ Meanwhile, the Board's head is directly responsible to the king¹²⁵ and must report to the king concerning all matters it has handled.¹²⁶

113. *Id.* art. 31.

114. See INSTRUCTIONS, *supra* note 85, arts. 1, 31.

115. *Id.* arts. 2, 3, 31.

116. *Id.*

117. Royal Decree No. 2/3/59/87, 1954, cited in Abd El-Fatah Hassan, *supra* note 12, at 322. Prior to this Decree, the Board was a section within the organizational structure of the administrative units of the Council of Ministers. *Id.* at 321.

118. *Id.* at 323-24, 326-30.

119. *Id.* at 324-26.

120. The Grievances Board Regulation No. M/51, 1985, art. 8.

121. *Id.* art. 8, e. Disciplinary actions previously were determined by the disciplinary agency. When this agency was abolished, its duties were transferred to the Grievances Board. See *infra* notes 127-35 and accompanying text.

122. The Board has jurisdiction to determine the following: disputes concerning civil servants salaries and other financial claims related to their service; claims to quash invalid decisions of public administration; compensation claims against public agencies; government contract disputes; criminal cases concerning bribes and similar offenses; claims to implement foreign decisions; and other duties assigned to the Board by other enactments. See The Grievances Board Regulation No. M/51, 1985, art. 9.

123. Claims against acts of public administration must be based on one of the following grounds: lack of jurisdiction, procedural defects, violations of regulations, misapplication of legal rules, or abuse of power. The Grievances Board Regulation No. M/51, 1985, arts. 1-b, 8.

124. *Id.* art. 12.

125. *Id.* art. 1. This Article reads: "The Grievances Board is an independent administrative judicial agency directly connected with the King." *Id.*

126. *Id.* art. 47.

Furthermore, the Grievances Board determines disciplinary cases referred to it by the Control and Investigation Agency.¹²⁷ It can impose on the accused any penalty,¹²⁸ including dismissal.¹²⁹ These disciplinary decisions are final, with the exception of dismissals involving officials of the eleventh grade and above.¹³⁰ Such decisions must be approved by the king.¹³¹ The Board is also the sole authority empowered¹³² to determine disciplinary actions involving officials who have left the civil service;¹³³ under that circumstance, it can impose a monetary penalty on the accused,¹³⁴ or it can bar the offender from a civil service appointment for a certain period of time.¹³⁵

Shari'a courts have no jurisdiction to review the Board's decisions,¹³⁶ nor are its decisions reviewed before any authority other than the king. The Grievances Board is directly answerable to the king who may direct the Board to handle its activities in a specified manner. However, its decisions are judicial in character. They have far reaching legal implications on parties involved in government activities. Therefore, the Grievances Board should have an appellate court oversee its functions, or in the alternative, the Grievances Board should function as an appellate court overseeing another court of first instance. Citizens' rights and the interests of parties involved in government disputes could be better protected as a result.

B. Kuwait

1. *The Civil Service Board: Structure and Managerial Duties.*—The Kuwaiti Constitution mandates that civil service policies must be laid down by the legislature.¹³⁷ The Civil Service Act (Act)¹³⁸ provides general rules to be followed by the executive.¹³⁹

127. *Id.* art. 8, e.

128. *Supra* note 104.

129. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 36.

130. The Grievances Board Regulation No. M/51, 1985, art. 8, c. *See also* Article 4 of the Royal Decree No. M/51, 1985, according to which disciplinary powers of the disciplinary agency were transferred to the Board.

Civil service positions are classified into ten groups. *See* The Civil Service Board Decision No. 440, 1984, annexed to INSTRUCTIONS, *supra* note 85, at 28. Grades of civil servants range from grade 1 to grade 15, which is the highest grade in the civil service grades ladder. *See* the Royal Decree No. M/29, 1984, annexed to INSTRUCTIONS, *supra* note 85, at 82.

131. The Grievances Board Regulation No. M/51, 1985, art. 8, e. *See also* the Royal Decree No. M/51, 1985, art. 4.

132. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 33.

133. The official service is terminated by force of law; if the official was penalized by a *shari'a* court for a criminal offense or if he commits an improper act, such as rape, taking bribes, theft, or using drugs. INSTRUCTIONS, *supra* note 85, arts. 80; 16, a; 16 b; 16 c.

134. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 33.

135. *Id.*

136. *See supra* note 36, 119-37 and accompanying text.

137. KUWAITI CONST. art. 26 (1962).

138. *See supra* note 63.

This Act mandates the establishment of a Civil Service Board.¹⁴⁰ The prime minister is the head of this Board,¹⁴¹ and the Civil Service Council¹⁴² discharges its function under its close supervision.

Chief among the important functions of the Board are¹⁴³ the following: maintaining administrative reform; developing the organizational structure of the executive; proposing civil service bills and regulation proposals; issuing mandatory interpretations for civil service laws; supervising, evaluating, and enhancing civil service performance; classifying jobs;¹⁴⁴ and determining training policies and programs. Permanent and ad hoc committees assist the Civil Service Board in handling its managerial duties.¹⁴⁵ Civil service policies are supervised by the executive which must carry out its duties under the authority of Parliament.

2. *Disciplinary Authorities*

a. Superiors' Disciplinary Powers.—Unlike the Saudi Civil Service enactments, Kuwait's legislation explicitly confers disciplinary powers on the deputy minister.¹⁴⁶ Deputy ministers may impose any penalty¹⁴⁷ on officials of the technical and service categories.¹⁴⁸ On officials of the general category, they may impose all penalties except dismissal.¹⁴⁹ However, a minister can either amend his deputy's disciplinary decisions or revoke these decisions.¹⁵⁰

Occupants of offices in the general category may be dismissed by the minister.¹⁵¹ The minister may also impose a written "caution"

139. *Id.* art. 1. Civil Service Regulation No. 49, 1977, was enacted in pursuance of this Article.

140. The Civil Service Act No. 15, 1979, art. 4.

141. *Id.* The above stated article mandates that both the Board's members and its procedures are to be determined by a royal decree. Members of the Board are: the prime minister (acting as the chairman), minister of planning, minister of education, minister of justice, and the minister for administrative and legal affairs.

142. The Civil Service Council is the permanent executive arm of the Board. It implements civil service policies under the authority of the Board. *See* The Civil Service Act No. 15, 1979.

143. *Id.* arts. 5, 9-10, 19.

144. Civil service jobs are either permanent or temporary. Permanent jobs are classified into four categories: the highest category, the general category, the technical category, and the service category. *See* The Civil Service Act No. 15, 1979, art. 12. Grades in the civil service range from grade 3 up to the excellent grade. The highest category includes the excellent grade, the deputy minister, and the assistant of the deputy minister. These grades are embodied in the schedule annexed to The Civil Service Regulation No. 49, 1977.

145. The Civil Service Act No. 15, 1979, art. 4.

146. The Civil Service Regulation No. 49, 1977, art. 61.

147. *Id.* art. 60. Penalties which could be imposed on civil servants other than the highest category are the following: reprimand; reduction in salary for not more than ninety days a year; reduction in salary for not more than one year, or demotion in grade and dismissal. *Id.*

148. *Id.* art. 61.

149. *Id.*

150. *Id.*

151. *Id.*

penalty on senior officials.¹⁵² Meanwhile, other penalties may be imposed on the latter by the Civil Service Board.¹⁵³

b. The Civil Service Board's Disciplinary Powers.—Besides its very wide managerial duties,¹⁵⁴ the Civil Service Board also sits as a disciplinary authority.¹⁵⁵ The full membership of this Board, or a committee of its members,¹⁵⁶ is the sole authority which can impose certain penalties on senior officials.¹⁵⁷ It has been rightly pointed out that disciplinary matters must be distinguished from quasi-political matters.¹⁵⁸ Disciplinary disputes should be handled by specialized authorities, but not by politicians.

This new¹⁵⁹ disciplinary policy is a major setback for the Kuwaiti disciplinary system. Due process of law should be strictly adhered to, and further protection is needed to maintain stability in the civil service. Job security is one of the prerequisites for a fair and efficient civil service system, but this can not be achieved by curtailing civil servant guarantees. Furthermore it is not a rational civil service policy to maintain job efficiency at the expense of job security. Both objectives should be maintained by a rational disciplinary system.

Nevertheless, government policymakers and politicians must not be deprived of their discretionary powers. They must be equipped with the powers necessary to maintain the state's security and the public interest. They should be authorized to dismiss high ranking officials for political considerations,¹⁶⁰ but disciplinary matters must be handled by specialized authorities. The latter authorities must discharge their function by due process of law and under the supervision of courts of justice.

152. Penalties which could be imposed on the highest category officials are ". . . limited; the only penalties are: a written . . ." caution, a reprimand, and dismissal. See The Civil Service Act No. 15, 1979, art. 28. See also The Civil Service Regulation No. 49, 1977, art. 60.

153. The Civil Service Regulation No. 49, 1977, art. 60.

154. See *supra* text accompanying notes 137-45.

155. The Civil Service Regulation No. 49, 1977, art. 62.

156. *Id.*

157. *Id.*

158. AFIFI, *supra* note 71, 352-54.

159. Previous laws provided better guarantees to the civil servant. The Civil Service Law of 1955 established two disciplinary councils which consisted of high ranking officials who determined disciplinary actions involving civil servants. Meanwhile, the Civil Service Act No. 18, 1960, established three councils to deal with disciplinary disputes involving officials of the different civil service categories. Furthermore, disciplinary procedures were better elaborated. See AFIFI, *supra* note 71, 346-51.

160. It is worth noting that the Civil Service Act, *supra* note 63, has conferred on the Executive a plenary power to achieve this end. Article 32 of this Act states: "The official service could be terminated for . . . [d]ismissal by the Council of Ministers for maintaining the public interest . . ." No one should argue against dismissals based on political considerations. Policy decision makers should be equipped with the necessary powers so that they can maintain the state's vital interests. Disciplinary penalties must be imposed, however, according to fair procedure and guarantees must be provided to maintain a fair trial.

C. *Analysis*

In both legal systems, acts of misconduct constitute official offenses. Civil servants are obliged to act properly, and they must not harm the reputation of the civil service. As such, they may be punished for acts of misconduct committed outside the sphere of the civil service. They must not violate Islamic traditions or prevailing social values.

The Saudi civil service system appears to be greatly influenced by Islamic traditions and social values. The civil servant must strictly observe Islamic values and the social customs followed by the society. Government regulations and rules tend to emphasize this aspect of the civil service. Specific provisions are enacted for maintaining Islamic traditions and mores. Furthermore, an explicit provision in the Saudi system requires the civil servant to act in harmony with the government's policy. This provision, it would seem, puts more restrictions on a Saudi's civil servant's activities than on activities of a Kuwaiti civil servant.

The Saudi and Kuwaiti disciplinary system confer plenary disciplinary powers without serious limitations. Ministers and heads of independent public agencies are vested with excessive powers which must not be abused by them. However, the Kuwaiti disciplinary system decentralizes powers much more than the Saudi system. The former system empowers more than one superior to impose penalties. Saudi senior officials, on the other hand, can impose penalties, but only under a delegated authority by the minister. It would seem that differences in the political environments in these countries are among the factors which dictate such different courses of action.

Furthermore, serious penalties involving Kuwaiti's senior officials are to be imposed by a committee of the Council of Ministers (*i.e.*, The Civil Service Board). This is an administrative, political review process. By contrast, similar penalties are to be imposed on Saudi senior officials by a judicial administrative tribunal (*i.e.*, The Grievances Board). It should be remembered that the Grievances Board is directly responsible to the executive. That is to say, the executive in both countries is the paramount authority. Moreover, separation of powers does not exist in the Saudi Arabian legal system.¹⁶¹

Civil service trends and developments in both countries show that policies have been introduced to accelerate administrative reform and to adapt modern civil service rules to the requirements in these countries. Nevertheless, civil service policies may be hindered without providing a secure environment for civil servants. Since they

161. See *supra* text accompanying notes 18-36.

can be easily dismissed, they may be reluctant to make difficult decisions, and creativity may be hindered as a consequence. The success of these modern policies depends to a large extent on their acceptance by the civil servant as well as the society at large. Social and political circumstances must be present in the minds of civil service reformers. Social development plans must be coordinated with administrative reform plans to lay down a solid foundation for steady and continuing progress in the civil service.

IV. Procedures, Avenues of Appeals, and Safeguards

A. Saudi Arabia

In Saudi Arabia, penalties imposed by the minister, or by an official acting under the minister's delegated authority, are not imposed without formal investigation.¹⁶² The accused is given an opportunity to defend the case before a final decision is made.¹⁶³ Decisions must state the claims of the accused and the defense as well.¹⁶⁴

Disciplinary decisions made by senior officials may be reviewed before the minister.¹⁶⁵ However, there is no formal appellate judicial avenue for claims against the disciplinary decisions made by the minister; such disciplinary decisions are conveyed to the Control and Investigation Agency and to the Civil Service Commission.¹⁶⁶ The named Agency may conduct a further investigation if it finds that the charges against the disciplined justify dismissal.¹⁶⁷ Investigation must be carried out in the presence of the accused, unless there are justifications to the contrary.¹⁶⁸ The case is then referred to the Grievances Board to determine a suitable penalty.¹⁶⁹

The Grievances Board entertains disciplinary claims in a judicial capacity.¹⁷⁰ The accused is to be informed, in advance, about the accusation invoked against him.¹⁷¹ A trial must be carried out in the presence of the accused who is entitled to be represented by a solicitor.¹⁷² The accused is also entitled to present his case before the

162. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 35.

163. *Id.*

164. *Id.*

165. There is no express legislative provision to this effect. Nevertheless, this view could be inferred from INSTRUCTIONS, *supra* note 85. Article 31-6 of these instructions implicitly supports this opinion. It reads "Delegation will not absolve the delegator of his responsibility." *Id.* As long as the minister remains responsible for actions of his delegate, it is reasonable to believe that the delegator must have authority to review delegated acts of his subordinate.

166. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 39.

167. *Id.*

168. *Id.* art. 10.

169. *Id.* art. 34.

170. The Grievances Board Regulation No. M/51, 1985, art. 1.

171. Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 19.

172. *Id.* art. 20.

Board and to summon witnesses as a defense.¹⁷³ The Board's decisions are determined by panels duly established for this purpose.¹⁷⁴ These decisions are final except dismissal decisions involving senior officials,¹⁷⁵ which must be approved by the king so that they can be enforced.¹⁷⁶

To conclude, the Saudi disciplinary system procedures seem to be simple. Decisions can be made quickly, and protection is afforded to the civil servant. However, there is inadequate due process. In the future, further avenues of appeal must be made available. The official's entitlement to office is a fundamental right which should not be infringed upon without due process of law. With a right of appeal to an independent reviewing body, the official's rights will be maintained, and the public interest will be secured as well.

B. Kuwait

Disciplinary decisions made by the minister or a senior official must be based on investigation,¹⁷⁷ which may be formal or informal.¹⁷⁸ The accused is referred to investigation by the minister or the deputy as the case may require.¹⁷⁹ The investigation is to be carried out in the presence of the accused who is entitled to be informed about the accusations raised against him.¹⁸⁰ Decisions must state reasons justifying the imposed penalty.¹⁸¹ Disciplinary penalties imposed by the deputy minister can be reviewed before the minister.¹⁸² The latter may then amend the penalty or even revoke it.¹⁸³

Disciplinary cases that are not within the jurisdiction of the subordinate's superiors are to be determined by the Civil Service Board.¹⁸⁴ The CSB can appoint a committee of its members to review the case.¹⁸⁵ Further investigation may be carried out by its member or by another official appointed by the CSB.¹⁸⁶ Consultation may be made with persons other than the appointed members.¹⁸⁷ Decisions made by the committee must then receive CSB approval. The

173. *Id.*

174. The Grievances Board Regulation No. M/51, 1985, art. 6.

175. *Id.* at art. 8, e. *See also*, the Royal Decree No. M/51, 1985, art. 4; Civil Servants' Disciplinary System Regulation No. M/7, 1971, art. 28.

176. *Id.*

177. The Civil Service Regulation No. 49, 1977, art. 55.

178. *Id.*

179. *Id.* art. 56.

180. *Id.* art. 57.

181. *Id.* art. 55.

182. *Id.* art. 6.

183. *Id.*

184. *Supra* notes 155-60.

185. The Civil Service Regulation No. 49, 1977, art. 62.

186. *Id.*

187. *Id.*

Civil Service Board's decision is final,¹⁸⁸ it cannot be reviewed before any other administrative authority.

However, disciplinary decisions may be reviewed before Courts of Justice.¹⁸⁹ Claims against disciplinary decisions may be raised before the Court of First Instance.¹⁹⁰ These claims must be based on certain general grounds of review.¹⁹¹ The named court's decisions are reviewable on appeal before a court whose determination is final.¹⁹²

The Kuwaiti disciplinary system provides the judicial legal procedures and appellate avenues which are necessary for securing a fair disciplinary system. Nevertheless, in the future, a further administrative appellate avenue should be available to review decisions made by the civil servant's superior. Moreover, disciplinary cases should be determined by disciplinary councils, not by the Civil Service Board. The Board's members are heavily involved in the policy-making process. Their broad responsibilities allow no time to determine disciplinary cases with due care. Disciplinary cases should be left to specialized authorities acting under the supervision of Courts of Justice.

V. Evaluation and Recommendations

The disciplinary legal systems of Saudi Arabia and Kuwait have undergone rapid developments and fundamental changes. Institutions have been established to manage and to regulate civil service activities. Civil service reform policies have been introduced to accelerate administrative reform, as well as to enhance efficiency in the civil service.

Trends in the laws of both countries show that the responsible Saudi and Kuwaiti authorities are inclined to import new administrative devices and to adapt them to the civil service requirements and social traditions that prevail in each country. Trends and developments also indicate that administrative reform in both countries is influenced by their respective political, traditional, and social circumstances. Social development programs, therefore, must accompany administrative reform plans to lay down a solid foundation for effective and continuous developments in these countries.

188. *Id.*

189. The Court of First Instance Chamber For Reviewing Government Disputes Act No. 20, arts. 1, 4, 7, 1981. This Chamber of the Court of First Instance has jurisdiction to review officials claims concerning salaries, allowance, and retirement pensions, as well as claims to quash invalid acts of public administration concerning decisions of appointment and promotion and claims against disciplinary decisions.

190. *Id.* art. 1. Dismissals by the Council of Ministers are, however, excluded from judicial review. *Id.* art. 1, 4.

191. *Id.* art. 4. Grounds of judicial review include: lack of jurisdiction, procedural defects, violating the law or applying and interpreting it incorrectly, and abuse of power. *Id.*

192. *Id.* art. 13.

Human resources in Saudi Arabia and Kuwait, as in any country, are the major means for creating change and developments. Attitudes toward work must be influenced to be positive. Leaders and managers in the civil service must create a healthy environment which motivates the civil servant, while maintaining stability and creativity within the civil service. Channels of communication between the head and the civil servant must be opened. Well-designed training programs will influence change and enhance efficiency. Policy guidelines must be made known to the civil servant to insure awareness of duties and responsibilities. Most importantly, these policy guidelines should be conveyed by newspapers, memoranda, and office instructions.

Job security is one of the major objectives in a rational civil service system. Accordingly, further appellate avenues must be opened for the civil servant. New administrative channels of appeal are needed in both countries. In addition, basic judicial appellate avenue must be introduced into the Saudi civil service system.

Disciplinary powers, in both legal systems, must be conferred on administrative authorities, but not on political leaders. Disciplinary matters are specialized subjects and must be handled by particular, neutral authorities. The disciplinary legal structure in both systems should be modified to meet this requirement. Proposed administrative appellate avenues must be organized in such a way as to enable these authorities to discharge their duties without interference by heads of public agencies involved in the dispute. That is to say, these proposed disciplinary authorities should have genuine independence and their neutrality must be ensured.

Judicial review of administrative action is a crucial element in a fair disciplinary system. Kuwait seems to follow a good pattern for judicial review. It is hoped that this system will be strengthened by expanding the scope of judicial review and by maintaining the independence of the judiciary. It is also hoped that external legal experiences will not influence the Kuwaiti government to replace its unitary judicial system with a bilateral judicial one. Such drastic change will complicate the Kuwaiti legal system and will increase the government's litigation costs.

Judicial review of administrative action in Saudi Arabia is the duty of the Grievances Board. *Shari'a* courts have been prevented from reviewing acts of public administration to maintain the flexible function of government. Nevertheless, the jurisdiction of the Board must be reinforced further. Moreover, another judicial appellate avenue should be introduced within the structure of the Grievances Board to provide further guarantees to the civil servant. Modifications within the structure of the Board should be made to give effect

to this recommendation.

To conclude, the Saudi and Kuwaiti civil service systems have introduced new policies and have established new institutions to implement them. Job security and job efficiency are the main goals of a rational civil service system. Both countries should endeavor to maintain these objectives through additional appellate avenues, and thus, maintain the public interest and citizens' rights.

