

The Lack of Epidemic Legislation in the Kuwaiti Legal System and the Implications of the Suspension of the National Assembly Sessions

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Abstract:

The dangers of COVID-19 have caused many countries to introduce regulations of different severity in hopes of curbing the spread of the disease. One of such countries is Kuwait which has introduced arguably severe restrictions, including those that may appear to contradict the Constitution, in May. The present article considers the ways in which Kuwaiti actions are similar to or different from those of other countries and provides an analysis of epidemic legislation and regulations. The methodology consists of a comparative multiple case study with primary sources, academic literature and news articles being the main sources of information. The findings suggest that the decision to promote rapidly enacted regulations or legislation despite their potential conflicts with constitutions was not made by Kuwait alone. Given the dangers of COVID-19, such violations were considered justified, and they were legitimised by corresponding acts, empowering respective bodies to introduce harsh measures to prevent the spread of the disease. Despite the fact that Kuwaiti epidemic legislation is approved by the World Health Organisation, some issues were encountered, including the lack of epidemics considerations in the Constitution and the

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problems with delaying National Assembly sessions. The implications include the recommendation for the introduction of specific, epidemic-focused comments in the Constitution, as well as a provision for National Assembly sessions.

Introduction

COVID-19 has become a major issue, causing many⁽¹⁾ countries⁽²⁾ all over the world⁽³⁾ to implement quarantine and other measures with the intent of slowing down its extremely quick spread⁽⁴⁾. In connection to these recent events, some⁽⁵⁾ research⁽⁶⁾ has been carried out on how to improve epidemic regulations or legislation to assist in the management of similar events. This literature demonstrates the need for investigating the topic within the context of particular countries, and it will be leveraged in this case study to discuss the implications of the lessons learned in Kuwait. The present article discusses the legislative implications of COVID-19 as illustrated by the regulations from different countries and applied to the case of Kuwait. It aims to compare the issues and current legislation of Kuwait with the concerns and solutions presented by other countries and draw conclusions or propose implications based on the results. The rest of the paper is structured as follows; a note on the methodology is provided, a literature review summarises the key information sources, and a discussion offers the comparisons and implications followed by a conclusion. The paper argues that the study of international epidemic legislation can be helpful for future legislation recommendations in Kuwait and other countries.

(1) Andrea Remuzzi & Giuseppe Remuzzi 'COVID-19 and Italy: what next?' (2020) 395 The Lancet 1225, 1226.

(2) U.S. Embassy in Kuwait, 'COVID-19 Information' (U.S. Embassy in Kuwait, 2020) accessed 20 May 2020.

(3) GorrisenFederspiel, 'COVID-19: The Danish Epidemic Act' (GorrisenFederspiel, 2020) accessed 1 May 2020.

(4) Marco Cascella et al., 'Features, Evaluation and Treatment Coronavirus (COVID-19)' (StatPearls Publishing, 2020) accessed 1 May 2020.

(5) NirmalKandel, Stella Chungong, Abbas Omaarand Jun Xing 'Health security capacities in the context of COVID-19 outbreak: an analysis of International Health Regulations annual report data from 182 countries' (2020) 395 The Lancet 1047, 1049-1050.

(6) Remuzziand Remuzzi, supra (n 1) 1226.

Research Methodology

This article presents a comparative case study⁽⁷⁾ that is based on available literature. Specifically, the Kuwaiti case is compared to the information about legislative decisions in other countries. Such an analysis cannot be carried out quantitatively; qualitative analysis, including that of a case study, is capable of developing meaningful insights into the similarities and differences between Kuwait and other countries⁽⁸⁾. The article relies on academic literature, but the most recent developments are based on newspapers and official website information. Additionally, primary sources were used whenever possible. It can be suggested that the article uses a pragmatic approach, in which the case of Kuwait is compared to other cases based on the information that is currently available, with a focus on reputed sources. The results of the comparison form the ground for analysis and recommendations.

Literature Review

In 2020, COVID-19, or coronavirus disease 2019, has reached the status of a global pandemic⁽⁹⁾. First recognised and verified in China in 2019, the disease is caused by 2019 novel coronavirus (COV-19), which is similar to the severe acute respiratory syndrome coronavirus, as well as bat coronaviruses⁽¹⁰⁾. COV-19 causes a range of health outcomes; it can be asymptomatic, have the symptoms of a cold or flu (dry cough, fever), cause mild pneumonia or result in severe conditions that require intensive care, including sepsis and organ dysfunction⁽¹¹⁾. Roughly 81% of the people affected by COVID-19 have mild symptoms; 14% experience severe ones, and 5% have critical COVID-19⁽¹²⁾. While COV-19's fatality rates are less significant than those of the most deadly coronaviruses

(7) Tim May, *Social Research: Issues, Methods and Research* (Open University Press 2011) at 220-227; see also Paivi Eriksson and Anne Kovalainen, *Qualitative Methods in Business Research* (SAGE 2015) at 133; Joseph Hair, Mary Celsi, Arthur Money and Michael Page, *Essentials of Business Research Methods* (Routledge 2015) at 196.

(8) Eriksson and Kovalainen, *supra* (n 7) at 116.

(9) Remuzzi and Remuzzi, *supra* (n 1) 1226.

(10) Nirmal Kandel et al., *supra* (n 5) 1048.

(11) Marco Cascella et al., *supra* (n 4).

(12) *Ibid.*

(roughly 2% compared to, for example, 10% of people with the severe acute respiratory syndrome coronavirus)⁽¹³⁾, the combination of its features, which include high infectiousness and prolonged incubation period (up to 2 weeks), made it exceptionally dangerous⁽¹⁴⁾.

Currently, no specific treatment for COVID-19 is available, although symptomatic treatment is applied depending on the severity of a condition⁽¹⁵⁾. As a result, the health security capacities of governments become critical; the prevention, detection and response to the new cases is a responsibility of local health organisations, as well as global ones⁽¹⁶⁾.

In Kuwait, at the beginning of May, the total registered cases of COVID-19 were just below 5000 people with 1776 people recovered and 38 deaths (0.7% death rate)⁽¹⁷⁾. By the middle of May, 18609 cases were registered (373% increase), 5205 people were recovered, and the number of deaths rose to 129 (0.7% death rate)⁽¹⁸⁾. Since the beginning of May, Kuwait citizens were urged to stay at home to limit the spread of the disease⁽¹⁹⁾, and from May 10 to May 30 curfew was introduced⁽²⁰⁾. Severe fines and imprisonment were introduced as coercive measures, but exercising in the fresh air was allowed within a specific timeframe for two hours every day with the condition that a mask would be used. Finally, governmental offices were closed for the same period of time with the understanding that online work is possible for some of the operations; but the National Assembly sessions were suspended⁽²¹⁾. However, and from a comparative perspective, the approach in other jurisdictions, such as the United Kingdom and the United States was different. For example, in the UK, with the country's challenging circumstances due to

(13) Nirmal Kandel et al., *supra* (n 5) 1048.

(14) Marco Cascella et al., *supra* (n 4).

(15) *Ibid.*

(16) Nirmal Kandel et al., *supra* (n 5) 1048.

(17) KUNA, 'Photo of the day' (KUNA, 2020) accessed 3 May 2020.

(18) KUNA, 'Photo of the day' (KUNA, 2020) accessed 21 May 2020.

(19) KUNA, 'Kuwait's MoH urges public to abide by home quarantine rules' (KUNA, 2020) accessed 1 May 2020.

(20) U.S. Embassy in Kuwait, *supra* (n 2).

(21) KUNA, 'Government desires delaying Wednesday's session' (KUNA, 2020) accessed 12 May 2020.

coronavirus (COVID-19), many steps have been taken to enable the Parliament to continue to fulfil its constitutional duties and to preserve the operation of parliament⁽²²⁾ and this was by adopting virtual means by holding their meetings via online video links⁽²³⁾. Furthermore, in the United States, a huge step was taken by the House of Representatives when they acted to allow the lawmakers to work and vote remotely and do their hearings virtually despite the fact that it is constitutionally required for them to be physically present⁽²⁴⁾.

In Kuwait, such changes could contradict the country's Constitution, including the articles that guarantee the freedom of assembly and prevent the suspension of the National Assembly sessions⁽²⁵⁾. However, as stated by the Kuwaiti constitutional expert Dr Al-Faili, he demonstrated that since the National Assembly presupposes a large gathering of people, it has been assumed that it is reasonable to postpone the session. Online Assembly cannot be held without appropriate legislation enabling such an option⁽²⁶⁾.

It should be highlighted that Kuwait is not the only country to introduce such regulations; they have been employed all over the world for centuries⁽²⁷⁾. The history of pandemic legislation can be illustrated with the help of the Epidemic Diseases Act 1897 of India, the UK Public

(22) See the UK Parliament website: <https://www.parliament.uk/business/news/2020/march/uk-parliament-coronavirus-update/> accessed 23 May 2020.

(23) The UK Parliament website regarding the virtual meeting: <https://www.parliament.uk/business/news/2020/april1/speaker-outlines-virtual-meeting-plan/> accessed 19 May 2020. Further details are here: <https://www.reuters.com/article/us-health-coronavirus-britain-parliament-idUSKCN21W2PL> accessed 23 May 2020. See also the Guardian: <https://www.theguardian.com/politics/2020/apr/20/mps-expected-approve-plans-virtual-parliament> accessed 24 May 2020.

(24) Committee on Rules at <https://rules.house.gov/bill/116/h-res-PIH-remote-voting-proxy> accessed 21 May 2020. For more details see the New York Times and the Washington Post: https://www.washingtonpost.com/politics/house-poised-to-adopt-historic-changes-allowing-remote-voting-during-pandemic/2020/05/15/b081d9f2-96ab-11ea-91d7-cf4423d47683_story.html accessed 22 May 2020. See also; <https://www.nytimes.com/2020/05/15/us/politics/remote-voting-house-coronavirus.html> accessed 22 May 2020.

(25) Constitution of Kuwait, 1962, art. 44, 181.

(26) Arab Times, 'Holding Assembly sessions electronically requires parliamentary proposal or govt draft law: Dr Faili' (Arab Times, 2020) accessed 21 May 2020.

(27) Wendy Parmet and Michael Sinha 'Covid-19 - The Law and Limits of Quarantine' (2020) 382 The New England Journal of Medicine e28.

Health Act 1875, as well as the New Zealand Epidemic Preparedness Act 2006. The first of these documents was introduced in response to a plague epidemic in Bombay, and it specified that the government should be allowed to introduce special measures to prevent epidemics, including the restriction of public assembly, with penalties named⁽²⁸⁾. While an argument can be made that the law can be helpful in the cases of epidemics, it is outdated and does not provide sufficient guidelines on epidemics management. Additionally⁽²⁹⁾, it has been misused to imprison freedom fighters, which is why some changes in this piece of legislation may be required⁽³⁰⁾.

The UK Public Health Act 1875 has been amended since its introduction to fit the modern-day needs of the UK. However, even its original version involved a set of provisions for the prevention of epidemic diseases, which empowered local governments to introduce regulations, including those related to burials, visitation, and medical aid⁽³¹⁾. It also specified violation penalties, vessel regulations, and the order of regulation publications. In other words, it enabled governments to take aggressive actions to stop pandemics.

The New Zealand Epidemic Preparedness Act 2006 provides similar special powers to the Prime Minister of the country, who is instructed to reach an agreement with the Minister of Health. The Prime Minister can then introduce epidemic notices, which signify an exceptional situation that can involve taking aggressive action to prevent and slow down the spread of an epidemic⁽³²⁾. It is a particularly well-detailed epidemic-focused legislation, and it specifies the limits of the actions and modifications to regulations which can be offered to prevent power abuse.

(28) Binod K. Patro, Jaya Prasad Tripathy, and Rashmi Kashyap 'Epidemic diseases act 1897, India: Whether sufficient to address the current challenges?' (2013) 18 *Journal of Mahatma Gandhi Institute of Medical Sciences* 109-110; see also Gilani, 'India, Pakistan grappling with archaic epidemic law' (Anadolu Agency, 2020) accessed 3 May 2020

(29) ManaviKapur, 'A 123-year-old law, once used to imprison freedom fighters, is India's primary weapon against coronavirus' (Quartz India, 2020) accessed 3 May 2020.

(30) Patroet al., supra (n 28).

(31) UK Public Health Act 1875, art. 134-140.

(32) New Zealand Epidemic Preparedness Act 2006.

Regarding the more recent epidemic acts, the 2020 amendments to the Danish Epidemic Act were adopted specifically in response to COVID-19. They involved severe restrictions, including the closing of various businesses, prohibition of large gatherings and meetings and public transport regulations with financial coercion methods (fines). However, it also incorporated provisions for ensuring the functioning of the country, including the management of food supplies and medications⁽³³⁾. Gorrisen Federspiel points out that the presented measures were in conflict with different constitutional rights, but the Minister of Health was empowered by the Act to impose such rules and enact them immediately, provided that the restrictions would be temporary and reasonable⁽³⁴⁾. To summarise, epidemic legislation has been practised all over the world, and it has been introduced to empower governments to take rapid, aggressive action, which may not be in line with constitutional rights but which is required for preventing and managing epidemics.

It should also be pointed out that the World Health Organisation has been involved in what can be considered health legislation with both soft recommendations two hard ones, including the International Health Regulations⁽³⁵⁾. The latter is directly connected to epidemicmanagement can be used to assess health issues outbreaks preparedness⁽³⁶⁾. Therefore, there are supra-governmental regulations that are relevant for epidemics as well.

In accordance with the International Health Regulations, the World Health Organisation has been carrying out assessments of Kuwait preparedness to deal with health crises. According to a recent report, Kuwait's capacities are "high," with the relevant legislation being regularly reviewed and updated; the infection-related capacities of the country are predominantly very well-developed⁽³⁷⁾. Regarding the legislation, it includes the Emiri Law on Communicable Diseases⁽³⁸⁾,

(33) GorrisenFederspiel, *supra* (n 3).

(34) *Ibid*.

(35) Lawrence Gostin, Devi Sridhar andDaniel Hougendobler 'The normative authority of the World Health Organization' (2015) 129 *The New England Journal of Medicine* 854, 856-858.

(36) Nirmal Kandel et al.,*supra* (n 5) 1049-1050.

(37) World Health Organisation, 'Joint external evaluation of IHR core capacities of the state of Kuwait' (WHO, 2017) accessed 20 May 2020.

(38) Kuwait, Law No. 8 of 1969.

which functions more or less the way the above-described regulations of other countries do. According to Dr Al-Faili, the law fully enables medical agencies to introduce restrictions, including quarantine measures, which have been established by the government in May, despite the constitutional right to assembly⁽³⁹⁾.

In the Constitution, the existence of exceptional situations has been recognised by the government. Specifically, in Article 69 of the Constitution, it is stated that Martial Law should be introduced during the times of war, proclaimed by the Amir and referred to the National Assembly every three months⁽⁴⁰⁾. Martial Law is an exception to the Articles of the Constitution, which is stated in Article 181⁽⁴¹⁾. The Article specifies that the provisions of the Constitution, as well as the National Assembly, should not be suspended with the exception of Martial Law enforcement. Additionally, the Article points out that Martial Law should have specified limits that must be taken into account. Furthermore, Article 71 specifies the existence of special events that are classified as emergencies and that can involve quickly enacted decrees, which still need to be referred to the National Assembly and are not supposed to be "contrary to the Constitution."⁽⁴²⁾ Thus, there are some provisions for exceptional situations in the Kuwaiti Constitution and legislation, but they are not explicitly connected to epidemics.

(39) Arab Times, 'Kuwait has right to impose medical quarantine' (Arab Times, 2020) accessed 21 May 2020.

(40) Constitution of Kuwait, 1962, art. 69 which states that "The Amir shall proclaim Martial Law in cases of emergency as determined by Statute and in accordance with the procedure stipulated therein. Martial Law shall be proclaimed by Decree, and that Decree shall be submitted to the National Assembly within the fifteen days to decide the course of Martial Law. Where this takes place during the Assembly's recess the matter shall be submitted to the new Assembly at its first meeting. The continuance of Martial Law shall be subject to promulgation of a Resolution passed by a majority of the members constituting the Assembly. In all circumstances the matter must be referred, under the aforementioned conditions, to the National Assembly every three months.

(41) Constitution of Kuwait, 1962, art. 181. Which states that "No provision of this Constitution may be suspended save in the course of Martial Law and within the limits determined by Law. National Assembly conventions may not, in any circumstance, be suspended during that period, nor may the immunity of its members be violated"

(42) Constitution of Kuwait, 1962, art. 71.

Analysis and Discussion

Given how recent COVID-19 events are, there is a substantial amount of literature on the topic. Naturally, it is still limited, but in addition to that, there is some older literature on epidemic legislation. Finally, there are news articles, which are especially helpful for the most recent events. Thus, the sources for the investigation of Kuwait and its comparison with other cases can be found. That said, the topic of epidemic legislation and regulations is not researched exhaustively, especially when Kuwait is concerned, so more research on it is possible.

The presented literature can be summarised as follows. COVID-19 is a significant issue, which made many governments all over the world introduce rather severe preventative measures. Kuwait, as one of such countries, has the relevant legislation, even as new regulations become enforced. A comparative analysis of several cases can help to understand what general practices are currently employed to deal with such issues.

The worldwide experience of regulations and legislation can be easily compared to that of Kuwait. All the analysed legislation pieces are generally concerned with providing the government with the power to perform the actions that are necessary to stop and manage epidemics. They tend to focus on restrictions, which may be justified since they tend to affect the rights of citizens, but they also often incorporate provisions on medical care and resource management.⁽⁴³⁾ In other words, most laws are comprehensive, and the one that is not (the Epidemic Diseases Act 1897 of India) is an outdated piece of legislation that requires a revision⁽⁴⁴⁾. In summary, the Kuwaiti legal provisions and recent actions are generally in line with the current and prior worldwide practices, and they are approved by the World Health Organisation⁽⁴⁵⁾.

Regarding the concerns about constitutional rights, the Danish Act⁽⁴⁶⁾ demonstrates that aggressive action that may affect them may be justified in extreme situations. Furthermore, it is an example of a legislative act that is specifically designed to override constitutional rights

(43) See the New Zealand Epidemic Preparedness Act 2006; the UK Public Health Act 1875

(44) Patroet al., *supra* (n 28).

(45) World Health Organisation, *supra* (n 35).

(46) GorrisenFederspiel, *supra* (n 3).

in extreme situations. Given that the Kuwaiti constitution already points out an exception to constitutional rights in the form of Martial law and emergency situations⁽⁴⁷⁾, an introduction of similar exception specifically for urgent situations specified by law appears reasonable. A new-legislation that specifies the importance of epidemic legislation could assist with the National Assembly concern.

Indeed, an interesting issue that has been encountered during the literature review is the problem of postponing the National Assembly sessions, which are especially critical now as quickly enacted decrees are referred to the Assembly⁽⁴⁸⁾. According to the Constitution, under no circumstances, the suspension of the National Assembly shall not occur even as a result of Martial Law, and this is in accordance with 181⁽⁴⁹⁾. Furthermore, as highlighted by Dr Al-Faili, the current legislation does not support the introduction of online-based Assembly sessions⁽⁵⁰⁾. This approach is currently adopted in the United States where the members of the House of Representatives must be present when voting. Nevertheless, the United States have rectified this rule and allowed the lawmakers to vote and hold their hearings virtually due to the current situation with Covid-19⁽⁵¹⁾.

Apart from that, it is imperative to mention that the former head of Faculty of Law at Kuwait University Dr. Othman Abdul Malik, demonstrates that Article 181 of the Kuwaiti constitution has a significant and serious loophole as the executive can apply the martial law by dissolving the National Assembly, thus applying the martial law temporary until the first session of the new National Assembly. Dr. Othman continues to state that in such scenario, the martial law can be valid for a period of two months, whereby the executive can exercise an exceptional and wide powers without any supervision by the National

(47) Constitution of Kuwait, 1962, art. 71, 181.

(48) Constitution of Kuwait, 1962, art. 71.

(49) Constitution of Kuwait, 1962, art 181.

(50) Arab Times, *supra* (n 26).

(51) Committee on Rules at <https://rules.house.gov/bill/116/h-res-PIH-remote-voting-proxy> accessed 21 May 2020. Further details see the Article by Nicholas Fandos, With Move to Remote Voting, House Alters What It Means for Congress to Meet (The New york Times 15 May 2020); see para 1 and 3. <https://www.nytimes.com/2020/05/15/us/politics/remote-voting-house-coronavirus.html> accessed 22 May 2020.

Assembly⁽⁵²⁾. Accordingly, and although the martial law is not currently applicable, Article 106 prohibits any postponement of the National Assembly for more than two months⁽⁵³⁾, thus the current suspension of the National Assembly without a new legislation in this regard could result in a new constitutional concern and conflict, knowing that no National Assembly sessions were held for a period that exceeds two months to date. Consequently, this could lead the executive to have wider powers in the absence of the National Assembly Members duties.

Given the fact that a highly contagious disease holds severe health risks for National Assembly, these concerns may need to be rectified. Specifically, the legislation meant to enable online Assembly sessions could help in such events by adopting the United States, United Kingdom patterns⁽⁵⁴⁾ or any other appropriate pattern in order to enable the lawmakers in Kuwait to fulfil their constitutional duties, as well as the modification of the Constitution to include epidemics as a form of emergencies that might affect the National Assembly.

It is important to note, despite the fact of the Kuwaiti Constitution in accordance with Article 90, which states. 'Every meeting held by the Assembly at a time or place other than that assigned for its meeting shall be invalid, and resolutions passed thereat shall, by virtue of law, be void'⁽⁵⁵⁾, according to the Explanatory Note on the Kuwaiti Constitution regarding the same Article, it does not preclude the Assembly to hold a meeting at a time or place other than that assigned if necessary, and this is in accordance with the necessity theory and prescribed legal conditions⁽⁵⁶⁾. According to the constitutional experts Othman Abdulmalek and Othman Khalil Othman opinions, the explanatory note shall be binding⁽⁵⁷⁾.

(52) Othman Abdul Malek Al-Saleh, *Constitutional Regime and Political Institution in Kuwait* (Kuwait - Dar Alkutub 2003) at p. 456 (Arabic source).

(53) Constitution of Kuwait, 1962, art. 106.

(54) The UK Parliament regarding the virtual meeting and Committee on Rules, *supra* (n 23) and (n 24).

(55) Constitution of Kuwait, 1962, art 90.

(56) See the Explanatory Note on the Kuwaiti Constitution at the National Assembly website: <http://www.kna.kw/clt-html5/run.asp?id=51> accessed 21 May 2020.

(57) National Assembly Studies, 'The Explanatory Note on the Kuwaiti Constitution and the extent of its binding'. At National Assembly website: <http://www.kna.kw/clt-html5/run.asp?id=658> accessed 20 May 2020.

Therefore, a constitutional amendment may not be required in order to adopt the virtual and online sessions for the National Assembly, but a new legislation.

The presented article has some critical limitations. First, due to the restrictions of the article format, it did not introduce many cases for comparison. However, the presented ones did demonstrate certain patterns, which were helpful for the analysis. Furthermore, as is common for qualitative research, it is not reasonable to attempt to view the findings as generalisable⁽⁵⁸⁾. It worth noting that since this topic is fresh and has not been explored before, additional data may change the presented implications rather significantly. As a result, further research is highly needed.

Indeed, regarding the future investigation, it is reasonable to propose a more in-depth inquiry into the individual cases that have been presented in case sufficient literature can be found for them. Since the scope of this article was limited, it could not go into details, but future research can carry out inquiries into individual countries or legislation pieces and apply the lessons learned from them to Kuwait.

Conclusion and Recommendation

COVID-19 has become a global pandemic, which prompted many governments to take direct action that can produce important implications for pandemic- and other healthcare-related legislation. The existing literature shows that historically, epidemic legislation has been implemented with diverse outcomes, and currently, many countries, including Kuwait, introduce regulations that would be against constitutional provisions without the appropriate laws. On the other hand, the specifics of the situation of a pandemic arguably justify such violation provided that it is temporary and reasonable. Kuwait uses a set of legislative acts that empower its medical agencies to handle epidemics, and the measures received the approval of the World Health Organisation. However, the National Assembly sessions must have additional legislation to enable them to meet remotely or any other safe way to ensure the legitimacy of

(58) Eriksson and Kovalainen, *supra* (n 7) at 116.

postponing sessions for the safety of the Assembly members. Accordingly, this research recommends, to avoid any constitutional conflict and absence of legislative powers and to guarantee the convening of the National Assembly sessions, adopting new legislations that are of importance such as holding the sessions virtually and this can be done, with the coordination with the ministers, by calling for an urgent session to be held by inviting enough members to meet the quorum in order to minimize any risk. Finally, due to the lack of research on this topic, future research and investigations are highly needed to deal with the current crisis and any future crises that may happen.

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غياب التشريعات الوبائية في النظام القانوني الكويتي وتداعيات تعليق جلسات مجلس الأمة

الدكتور/ عبدالرحمن الهاجري

المستشار/ محمود محمد خميس

ملخص:

تسببت مخاطر فيروس كورونا (كوفيد-١٩) في توجه العديد من الدول لتبني تشريعات متفاوتة من حيث الصرامة على أمل الحد من انتشار هذه الجائحة، ومن بين هذه الدول فرضت دولة الكويت قيوداً يمكن القول بأنها صارمة في شهر مايو، إذ شملت ما يبدو أنه متعارض مع الدستور. يتناول هذه المقالة بالبحث أوجه التشابه والاختلاف بين الإجراءات الكويتية عنها في الدول الأخرى ويقدم تحليلاً للتشريعات واللوائح الخاصة بمكافحة الوباء. يتألف منهج البحث من دراسات مقارنة لحالات متعددة مع المصادر الأولية والأدبيات الأكاديمية والمقالات الإخبارية باعتبارها المصادر الرئيسية للمعلومات. وتشير النتائج التي توصل إليها البحث إلى أن قرار تبني اللوائح أو التشريعات التي تم سنّها على وجه الاستعجال على الرغم من تعارضها المحتمل مع الدساتير لم يكن سلوكاً انفرادياً من قبل دولة الكويت فحسب، ولكن نظراً لمخاطر فيروس كورونا (كوفيد-١٩)، فقد اعتبرت هذه المخالفات على أنها انتهاكات لها ما يبررها، وتم إضفاء الشرعية عليها من خلال الإجراءات التي تم تنفيذها، وذلك من خلال تمكين الجهات المعنية لاتخاذ إجراءات قاسية لمنع تفشي هذه الجائحة. وعلى الرغم من إقرار منظمة الصحة العالمية للتشريعات الكويتية الخاصة بمكافحة الأوبئة، إلا أنها واجهت بعض المشكلات، منها عدم وجود اعتبارات تتصل بالأوبئة في الدستور الكويتي يضاف إليها تعليق جلسات مجلس الأمة. وقد شملت التداعيات المترتبة على ذلك التوصية بإدخال مواد محددة تركز على مكافحة الأوبئة ضمن الدستور الكويتي، فضلاً عن تضمين أحكام تجيز عقد جلسات مجلس الأمة.