

# Syria: The Interference of the Executive Branch in the Judiciary and its Impact on Safeguarding Democracy

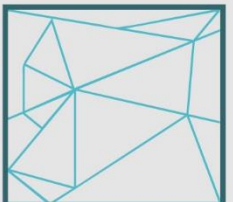
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# **Syria: The Interference of the Executive Branch in the Judiciary and its Impact on Safeguarding Democracy**

[Syrians for Truth and Justice](#) (STJ) prepared this paper in response to the [call](#) for input of the Special Rapporteur on the independence of judges and lawyers for the thematic report on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy. In this submission, STJ answers questions on the judiciary in Syria, and addresses the absence of the separation of powers principle, the dominance of the executive authority and its impact on the independence of judges and courts, as well as the consequences on safeguarding democracy.

## 1. Judiciary and Democracy in Syria:

Separation of powers is a basic principle of democracy, which is far from reality in Syria where judges cannot exercise their roles as guardians of democracy, rule of law, human rights, and freedoms. For several decades, the judiciary in Syria has been undermined or silenced, and therefore, a key pillar of a functioning democracy has been crushed by neutralizing the vital institution that guarantees rights and freedoms in the state of law, which is a prerequisite in a democratic society.

## 2. The Independence of Judiciary:

An independent judicial system is a key pillar of justice and a prerequisite for the rule of law. Judges should be able to enjoy guarantees relating to their security. Moreover, the judiciary must decide matters before them independently, impartially, based on facts, and in accordance with the law, without any restrictions, improper influences, coercion, or interferences, for any reason, especially that judges are charged with the ultimate decision over life, freedoms, rights, duties, and property of citizens.<sup>1</sup>

The Human Rights Committee emphasizes in the [General Comment 32](#) on Article 14 of [ICCPR](#) that judicial bodies must be independent of the executive and legislative authorities in deciding legal matters in proceedings that are judicial in nature.

Despite the state's obligation to ensure the independence of the judiciary, Syria witnessed a dominance of the executive authority when the Ba'ath Party seized power. The Emergency Law has worked for nearly half a century to consolidate power in the grip of the executive authority represented by the President and security services.<sup>2</sup>

[The Syrian Constitution of 2012](#) stipulates that “**the Syrian Arab Republic is a democratic state**”<sup>3</sup> and that “**the rule of law shall be the basis of governance in the state**”.<sup>4</sup> Also, it addresses the tasks and powers of the three authorities (legislative, executive, and judicial). However, this principle of separation of powers is undermined by the dominant power granted to the executive authority –especially the President– and the almost utter powers and immunity granted to the security services, which are not even mentioned in the Constitution.

The executive authority's interference in the judiciary is a violation of the [Basic Principles on the Independence of the Judiciary](#). Moreover, it constitutes a violation of the principles of a fair trial which affirm that the right to trial by an independent, impartial, and competent court

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<sup>1</sup> [Basic Principles on the Independence of the Judiciary](#). United Nations General Assembly. 06 September 1985

<sup>2</sup> Ibid

<sup>3</sup> Article 1 of the Constitution of 2012

<sup>4</sup> Article 50 of the Constitution of 2012

established by law is an absolute right that is not subject to exception and a general principle of customary international law.<sup>5</sup>

The failure to enjoy the right to a fair trial due to the interference and influence of the executive authority undermines the framework of legal protection granted by the Constitution and international law to enjoy basic rights and freedoms through which the democracy of society is formed.

### 3. Guarantees at the Constitutional Level:

The Syrian Constitution states that **“the judicial authority is independent, and the President of the Republic shall ensure this independence, assisted by the Supreme Judicial Council”**.<sup>6</sup> The primary task of this Council is to **“ensure the guarantees necessary for the independence of the judiciary”**.<sup>7</sup> Also, the Constitution stipulates that **“judges are independent and there is no authority over them except that of the law”**<sup>8</sup>. Furthermore, it includes a special chapter on the Supreme Constitutional Court.

However, the Constitution itself deprives the judiciary of its independence as it stipulates that the President of the Republic heads the Supreme Judicial Council.<sup>9</sup> Accordingly, the President becomes the head of both the executive and the judicial authorities.

Moreover, it is worth mentioning that the Syrian Constitution has referred the issue of appointing, promoting, transferring, disciplining, and dismissing judges to the law, without providing any constitutional guarantees. Finally, the Constitution does not address the immunity of judges in any article.

### 4. Appointment and Dismissal of Judges:

The authority responsible for the judges should be independent of the executive authority in both its composition and work.<sup>10</sup> However, Syrian legislation includes several articles that enable the executive authority to dominate other authorities.

Decree 98 of 1961 on the Judicial Authority Law and its amendments, grants the Ministry of Justice (representing the executive authority) broad powers related to judiciary including promoting, transferring, disciplining, dismissing judges, proposing their appointment and accepting their resignation, and several other tasks that fall within the judicial framework.<sup>11</sup>

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<sup>5</sup> [Fair Trial Manual](#). Amnesty International. 09 April 2014

<sup>6</sup> Article 132 of the Constitution of 2012

<sup>7</sup> Article 133(2) of the Constitution of 2012

<sup>8</sup> Article 134 of the Constitution of 2012

<sup>9</sup> Article 133(1) of the Constitution of 2012

<sup>10</sup> Report of the Special Rapporteur on the independence of judges and lawyers. 24 March 2009. [A/HRC/11/41](#)

<sup>11</sup> Article 1 of Legislative Decree 98 of 1961

Moreover, although the preparation of draft laws, regulations, and judicial communications is at the core of the Supreme Judicial Council's work, the Judicial Authority Law entrusted this task to the Legislation Department of the Ministry of Justice.<sup>12</sup>

To present the extent of the executive authority's control over the judicial bodies, STJ cites the following two examples:

#### 4.1. The Supreme Constitutional Court:

The framework of the Supreme Constitutional Court (SCC), which monitors the constitutionality of laws, ensures the supremacy of the Constitution, and protects human rights and freedoms, is controlled by the executive authority represented by the President of the Republic, which is a clear interference in the independence and integrity of the judiciary.

This violation has a negative impact on other rights because the SCC is not exercising its power to amend or repeal any legislation that would violate the rights of citizens.

According to the Syrian Constitution, the President appoints the SCC's members.<sup>13</sup> This constitutes a violation of the separation of powers principle, and an infringement by the head of the executive authority on the work of the judiciary, which –according to the Constitution and the law– is supposed to be “**an independent judicial body.**”<sup>14</sup> Granting the President absolute powers to appoint and select members of the SCC makes its members de facto administrative employees. Also, it makes judges vulnerable to replacement at any time without any rules or standards that guarantee the independence of their decisions.<sup>15</sup>

It is meaningless to stipulate the jurisdiction of the SCC to assess the validity of the presidential elections or to try the President for high treason because it is not possible for the Court's members to judge who appoints them. Moreover, while the mandate of the Court's members lasts for four years, the Presidential term is seven years, which deprives judges of any guarantee of independence and impartiality. In addition, the crime of high treason is not defined in Syrian legislation, and there is no punishment or crime unless stated in a legal text.<sup>16</sup>

#### 4.2. The Supreme Judicial Council:

The Supreme Judicial Council (SJC) is the highest judicial authority in Syria. However, under the Constitution of 2012, the Judicial Authority Law of 1961, and several special laws, and after the creation of exceptional courts, this SJC no longer has exclusive jurisdiction over judges. While the military judiciary is affiliated to the Minister of Defense, the administrative judiciary is affiliated to the Council of State, and the real estate judiciary is affiliated to the Minister of Justice and the General Director of Real Estate Services.

According to the Judicial Authority Law, the Minister of Justice holds the position of Vice President of the SJC,<sup>17</sup> and heads half of its members; since the Assistant Minister of Justice is

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<sup>12</sup> Article 8 of Legislative Decree 98 of 1961

<sup>13</sup> Article 141 of the Constitution of 2012 and Article 3 of Law 7 of 2014

<sup>14</sup> Article 140 of the Constitution of 2012 and Article 1 of Law 7 of 2014

<sup>15</sup> For more information, see the report of Syrians for Truth and Justice. [The Supreme Constitutional Court in Syria: A Formal Independent Tool in the Hands of the President](#), 15 August 2022.

<sup>16</sup> Article 51 of the Constitution of 2012

<sup>17</sup> Article 65 of Legislative Decree 98 of 1961

an employee in the Ministry of Justice, and the head of the Judicial Inspection Department is an employee affiliated with the Minister of Justice. Moreover, the latter heads the Public Prosecution, and therefore, heads the Attorney General. As a result, the Minister has great control over the judiciary, which deprives judges of their independence and immunity.

## 5. Immunity of Judges:

According to the Judicial Authority Law, public prosecution for crimes committed by judges may only be brought by the Attorney General, either with the permission of a committee consisting of the Head of the Court of Cassation and two of its senior advisors, or upon the request of the SJC if a disciplinary trial proves the crime.<sup>18</sup> In both cases, the accused judge remains at the mercy of the Head of the SJC and the Deputy who have the power to initiate legal proceedings.

In practice, the President of the Republic and the executive authorities can threaten judges. The Minister of Justice has the power to order the Attorney General to initiate legal proceedings against a judge. The Attorney General is appointed by and reports to the Minister of Justice, and therefore, judges do not enjoy any kind of legal protection or judicial immunity. Likewise, a judge who violates the instructions of the executive authorities can be accused of violating public regulations, given that these instructions are part of public order.<sup>19</sup> It is worth noting that trial procedures of accused judges are conducted in secrecy.<sup>20</sup>

Moreover, because of the power granted to the executive authority –represented by the President of the Republic and the Minister of Justice, the Court of Cassation cannot violate the orders of this authority when prosecuting a judge according to the Judicial Authority Law.<sup>21</sup>

Moreover, the Judicial Inspection Department, which is responsible for inspecting the work of judges, prosecutors, and judicial departments,<sup>22</sup> consists of judges who are reported to the Minister of Justice and the Head of the SJC.<sup>23</sup>

As an example, Decree 95, issued by the President in 2005, violates the Judicial Authority Law and the legal provisions in force. According to the Decree, 81 judges were dismissed in 24 hours by the Council of Ministers Presidency, without any means of appeal or review.<sup>24</sup>

The power granted to the executive authority poses a constant threat to judges and forces them to evaluate and enforce their judicial role based on “satisfying” the executive authority regardless of the rule of law. Accordingly, the policies of the executive authority, although

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<sup>18</sup> Article 114 of Legislative Decree 98 of 1961

<sup>19</sup> For more information, see the report of Syrians for Truth and Justice, [Syria: The Power of the Executive Branch and its Security Organs Make Judicial Immunity Ineffective](#), 28 July 2022.

<sup>20</sup> Article 111 of Legislative Decree 98 of 1961

<sup>21</sup> Article 115 of Legislative Decree 98 of 1961

<sup>22</sup> Article 11 of Legislative Decree 98 of 1961

<sup>23</sup> Article 12 of Legislative Decree 98 of 1961

<sup>24</sup> Decree 95 of 2005 states that “Contrary to the legal provisions in force, particularly Article 92 of the Judicial Authority Law 98 of 1961 and its amendments, the Council of Ministers may, within twenty-four hours and according to its discretion, decide to dismiss judges from service with no requirement to justify or include the reasons for the dismissal decision. The judge who is to be dismissed from service shall be dismissed by a decree, which is not subject to any method of review or appeal before any administrative or judicial authority. The rights of the dismissed judges shall be liquidated following the provisions of the law in force”

undermining rights, freedoms, and democratic practice, constitute an implicit reference for judges to carry out their duties.

## 6. Exceptional Courts:

In an independent judiciary, all courts and judicial bodies should be affiliated to the judicial authority, and every individual should only be tried before it. According to several laws and procedures in Syria, many exceptional courts are established with a judicial capacity. However, they are neither independent, nor affiliated to the SJC.

Several decades ago, exceptional courts began to be formed in Syria, following the declaration of a state of emergency in 1963,<sup>25</sup> including Exceptional Military Courts in 1965, Field Military Courts in 1968,<sup>26</sup> the Supreme State Security Court in 1968,<sup>27</sup> and the Terrorism Court in 2012.

Since their formation, exceptional courts have been used as a tool to intimidate and oppress Syrian society, in contravention of the judiciary's function of protecting rights, freedoms, and democracy. These courts are composed either of army officers who are not necessarily certified in law (such as Military Field Courts)<sup>28</sup> or of judges selected by the President (such as the Court of Terrorism).

Moreover, exceptional courts are subject to the executive authority. For example, the President and the Minister of Defense have absolute control over the Military Field Courts with regard to formation, ratifying the rulings, suspension, and ordering a retrial.<sup>29</sup> Further, judges of the Terrorism Court are appointed by a presidential decree, and rulings issued by the court are subject to appeal before a special chamber in the Court of Cassation formed by a presidential decree.<sup>30</sup> In addition, exceptional courts are exempt from adhering to the rules and procedures stipulated in the legislation.<sup>31</sup>

Furthermore, the current structure of the Syrian Military Judiciary indicates that it is exceptional because it is affiliated to the Ministry of Defense and its judges follow military regulations. However, the jurisdiction of these courts is not limited to trying military personnel, but also civilians. Moreover, the military judiciary assesses whether a case is within its jurisdiction which constitutes an infringement on the powers of the ordinary judiciary. Also, the Military Public Prosecution must obtain a prosecution order against the accused which is issued by decree or decision of the General Command of the Army and Armed forces or by order of the Head of the General Staff.<sup>32</sup>

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<sup>25</sup> The state of emergency was ended by Legislative Decree 161 of 2011

<sup>26</sup> The Courts were abolished by Legislative Decree 32 of 2023

<sup>27</sup> The Court was abolished by Legislative Decree 53 of 2011

<sup>28</sup> For more information, see the report of Syrians for Truth and Justice: [Military Field Courts in Syria: 55 Years of Arbitrary Decisions](#), 13 October 2023.

<sup>29</sup> Legislative Decree 109 of 1968

<sup>30</sup> Article 2 of Law 22 of 2012

<sup>31</sup> Article 7 of Law 22 of 2012, Article 7 of Legislative Decree 47 of 1968, and Article 5 of Legislative Decree 109 of 1968

<sup>32</sup> Articles 39, 50, 51 and 53 of the Penal Code and Military Procedures 61 of 1950.

The nature of the exceptional courts indicates that they are called “courts” only to nominally constitute a judicial authority, but they are actual executive practices rather than applying the principle of the rule of law.

Violations within the jurisdiction of these courts constitute an abuse of the laws due to the ambiguity of the relevant provisions and their broad interpretations, which enables the executive authority, through exceptional courts, to consider any democratic exercise of rights and freedoms a violation of law.<sup>33</sup>

## 7. Immunity of Security and Military Institutions:

The Syrian legislator excludes several agencies that exercise judicial police duties and their members from judicial oversight. Decree 14 of 1969 establishing the State Security Department stipulates that **“prosecuting any member of the Department for crimes committed during the execution of specific tasks entrusted to them, or when initiating them, is only possible upon a prosecution order issued by the Director”**.<sup>34</sup> Moreover, Decree 549 of 1969 states that contractors or those who are employed at the State Security Department, may not be prosecuted by the judiciary system, in crimes arising from the nature of their work or in the course of performing it, before being referred to the Disciplinary Board and upon a prosecution order issued by the Director.<sup>35</sup>

In 2008, Legislative Decree 64 was issued to amend Article 47 of the Penal Code and Military Procedures 60 of 1950 granting Police officers and the security forces immunity for crimes committed by them while performing the tasks entrusted to them. A prosecution is only possible by a decision of the General Command of the Army and Armed forces. Also, members and officers of the Syrian army are immune from prosecution unless the Military Public Prosecution obtains a prosecution order pursuant to a decision or decree issued by the General Command of the Army and Armed forces.

Granting immunity to military and security agencies constitutes a violation of the rights to equality before the law and equality before the judiciary, which contributes to strengthening impunity and limits the ability to exercise basic rights.

The judicial branch is unable to carry out its role in promoting justice and equality and achieving democracy, especially because it is not possible to prosecute many workers in the agencies entrusted with implementing the law. This often leads to them violating the rights and freedoms of citizens. Moreover, judges cannot feel safe or secure because their fate is in the hands of the executive authorities, and they are vulnerable to dismissal at any moment. If judges are not able to defend their basic rights, they will not be able to protect the rights of the citizens.

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<sup>33</sup> For more information see the report of Syrians for Truth and Justice Syria: [The Legacy of Fayez al-Nouri— Thousands of Unjust Verdicts against Ba’athist Agenda Opponents](#), 17 March 2022

<sup>34</sup> Article 16 of Legislative Decree 14 of 1969

<sup>35</sup> Article 74 of Legislative Decree 549 of 1969





## ABOUT STJ

Syrians for Truth and Justice (STJ) started as an idea in a co-founder's mind while attending the U.S. Middle-East Partnership Initiative's (MEPI) Leaders for Democracy Fellowship program (LDF) in 2015. The idea became a reality and flourished into an independent, non-profit, impartial, non-governmental human rights organization.

STJ's beginnings were more than humble; initially, it only reported stories of Syrians who experienced arbitrary arrest, enforced disappearance, or torture. Planted in fertile soil, the seed of this project grew into an established human rights organization licensed in the Middle East and the European Union. STJ today undertakes to detect and uncover violations of all types committed in all Syrian parts by the various parties to the conflict.

Convinced that Syria's diversity is a wealth, our researchers and volunteers serve with unflinching dedication to monitor, expose, and document human rights violations that continue unabated in Syria since 2011, regardless of the affiliation of the victims or perpetrators.