

The Syrian Law... However...

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## **Introduction**

### **The Scope of the study:**

Exceptional jurisdiction is among the most dangerous systems violating the right to a fair trial, it opposes the principle of jurisdiction independence since the criteria which govern the exceptional jurisdiction is inadequate to do achieve justice.

Also, the establishment of exceptional courts should not violate guaranteeing the rights of the accused. Indeed, the preservation of the rights of the accused is required and no one disagrees with it. If there are courts that violate the rights and guarantees of the accused, even if they are established in exceptional circumstances, they must be stopped. None of the accused should be referred to it, no matter what the reasons and justifications are since the freedom and rights of individuals are above anything else. Especially, the right to have a fair trial.<sup>(1)</sup>

Fair trial is one of the fundamental human rights that is based on a set of procedures in which criminal litigation takes place within the framework of the protection of personal freedom, including human rights and dignity. Having a fair trial is based mainly on the availability of group procedures for all stages of the criminal trial that preserve the accused's dignity and his

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1 - Special and Exceptional Courts and their Impact on the Rights of the Accused .... Dr Abdullah Saeed Fahad Al-Dawa.

legal personality. The accused, based on these procedures, should not be subjected to harsh treatment, beaten and tortured, forced to confess against themselves, prevented from providing their evidence, denied the right to defend, or referred to a special court.

The principles of a fair trial require that the accused should be treated as an innocent until a judgment is passed convicting them by a competent judicial authority, after the availability of evidence and fulfilling all the guarantees, which are legally established for them.

Their case should be brought before an impartial and an independent court, which should consider it objectively, fairly and swiftly, ground the judgment, and enable the accused to appeal.

## **2 - The importance of the study:**

This book is important as it affirms the illegality of the exceptional jurisdiction, which is practised by Syrian legislations and lacks the planned guarantees that ensure and protect freedom and personal rights for those tried before the exceptional courts, should we consider these guarantees in the light of the constitutional and international rules, which are planned for the accused who is tried before these courts.

- The book contributes to drawing attention to the new dimensions of the unconstitutional practices. It also highlights the right to litigate according to the Syrian constitution and the existing laws, and its difference according to practical application, which is far from what these laws imply, which are related to the guarantees of the accused in a fair trial.

## **3 - The research plan:**

The book has six parts, each of which is divided into several chapters:

- In the first chapter, we discussed the concept of the right to litigate according to the Syrian constitution and the Syrian code of criminal procedure.

- The second chapter explains declaring and ending the state of emergency in Syria.

- The third chapter discusses the types of jurisdictions in Syria, which are two types: normal jurisdiction and exceptional jurisdiction.

- The fourth chapter discusses the exceptional courts, which were established in Syria, including the establishment of the State Security Court and its abolition.

- The fifth chapter researches the field courts, the laws of their creation, their composition, the specific and personal jurisdiction of the court, procedures, and sentencing.

- the sixth chapter highlights the military courts, the law of their creation, the crimes which it considers, its procedures, and its jurisdiction.

- The seventh chapter studies terrorism court, the law of its creation, its composition, the specific and personal jurisdiction. the procedures followed before the court, the verdict mechanism.

This book also included an analytical study of the amnesty decrees issued in Syria between 2011 - 2020 and the impact of these decrees on those who were tried before the Terrorism Court. We begin this study with a research to clarify the concept of the legislative decree, the law, and the difference between them in terms of the issuing entity and its power.

The book begins with an introductory chapter dealing with the concept of a fair trial according to the international and Syrian laws. Meanwhile, the conclusion shows the mechanism of judgments issued by the exceptional courts in both practice and reality.



## **The legal framework of detention according to the Syrian legislation**

### **Fair trial:**

Justice is the primary criterion of respecting the individuals, their rights and freedom. It is the basis for a fair trial and the real standard of the rule of law. Especially, in criminal matters.

That is why we preferred to begin this book with an introduction about the fair trial and its basis according to the international and Syrian laws. This would be the basis to explain the parts of the book and clarify the violations of these bases. We briefly explained the special criteria for women, children and those sentenced to death.

The real basis for the accused's right to have a fair trial is assuming that the person is innocent so that this right does not diminish except by a judicial judgment that acquires a peremptory degree, which is called the presumption of constitutional innocence according to what is stated in the second paragraph of Article / 51 / of the Syrian Constitution: "Every accused is innocent until they are convicted by a court ruling concluded in a fair trial." The basic principle of any human being is that he/she has not committed a crime that is criminalized by law since doing any action is an accident that must be proven.

Hence the principle of the presumption of the innocence of the accused

came until his/her guilt was proven by a final judicial ruling, which forms the basis for fair trial standards. This is consistent with the public interest in the necessity of preserving freedom and individuals' rights.

**The nature of the right to a fair trial is based on several criteria:**

The right to a fair trial is a natural right derived from the right to litigate, it is a right of every human being. It is also considered a personal right, as he/she aims to protect his/her interests. This is a public right as it aims to protect a public interest that reveals the truth and ensures that the society punishes who attacks the interests protected by law. It also has a goal of achieving justice, this assumes ensuring equality between individuals before law and jurisdiction. It is one of the most fundamental human rights, therefore it has gained international character since it has been referred to in international conventions.

**The foundations and rules of a fair trial according to the international and Syrian laws:**

The right of the accused to be tried by an independent and impartial court in addition to the assumption of presumption of innocence of the accused until proven guilty according to law.

Trial publicity, oral trial proceedings, presence of litigants, and their representatives during trials, transcribing trials procedures. Limit the count with the case's limits.

Guarantee the right to defend. The accused must be informed of the charge on which he/she is being tried. The trial of the accused must be completed in a reasonable time, and the accused's right to appeal the verdicts issued against him/her must be guaranteed.

The right to equality before the law, laws should be free from discrimina-

tion and the right to equality before courts.

The right not to be coerced to confess the guilt and to exclude evidence taken under torture, or coercion.

Prohibition of retroactive application of criminal laws, or the trial of the accused of the same crime twice.

The right of the accused to defend themselves in person, or through a lawyer, and the right to call witnesses to discuss with them. The right to use an interpreter, and to translate all trial documents.

It is not permissible to impose penalties on a defendant unless a final judgment is issued against him/her, the personality of the official criminal, the right of reparation for victims of torture, and ill-treatment.

**Talking about a fair trial assumes that the person is the subject of the trial. S/he is being held, so it is important to mention the minimum standards to be observed when someone is detained:**

The right not to be coerced to confess guilt. The right to communicate with the outside world, the right of informing the detainee's family of the reasons and whereabouts. The right to ask for doctor's assistance, the right of staying silent. The right to have humane conditions in custody. The right to be detained in a recognized place.

The authorities must keep official records of all detainees and in a central archive, separate convicted from arrested individuals.

Not to be subjected to torture and ill-treatment, the inadmissibility of prolonged solitary confinement, not using force by law enforcement officials except when necessary. Physical or psychological pressure is not permitted during interrogation. The restriction is used only when necessary. Detainees

should be searched by same-sex personnel in a way that preserves human dignity. Prohibition conducting medical or scientific examinations unless the person in charge agrees out of a free will. The prohibition of collective punishment. The prohibition of confinement in a dark cell.

**We also believe that we must provide the special standards for people on death row each one, as follows**

- 1- Reducing the scope of crimes punishable by death.
- 2- Restricting the death penalty on certain groups of people, such as pregnant and lactating women, children, the elderly and the mentally disabled.
- 3- Strict adherence to all rights of a fair trial.
- 4- The right to seek pardon and commutation of the sentence.
- 5- The importance of having enough time for the death sentence and its execution.
- 6- Not violating the dignity and rights of people on death row.

**Given the privacy of the detained women, there are special rules relating to them, namely:**

- \* Detention of women in isolation from men and under the supervision of female guards. Searching them by women in a decent way that preserves their dignity.
- \* Provide appropriate medical care for pregnant and lactating women.

**Also, there are special standards for children in detention because of the specificity of their situation, which are:**

- \* Allocate an independent juvenile jurisdiction.
- \* Countries should strive to address juvenile delinquency without resort-

ing to official trials.

- \* Quick decision-making in juvenile cases.

- \* Respecting the privacy of the juvenile.

- \* No child shall be detained except as a last resort and for the shortest possible period.

- \* Provisions must not be public.

- \* The best interests of the child must be the primary consideration in the punishment, a prison sentence must be the last resort.

- \* Separate juveniles from adults in places of detention.

Provide their care in detention centres.

It should be noted after this introduction agreements and international treaties permit the so-called derogation from rights during exceptional emergencies in situations which are precisely defined and such non-compliance shall not exceed the necessary period required. In this case, the state complies with the following:

- 1- The exigencies of the situation strongly require these measures.

- 2- These measures are not incompatible with other obligations of the state under international law.

- 3 - Officially declare a state of emergency, as we will explain later, and the state to notify the Secretary-General of the United Nations immediately of these measures and their causes.



**Chapter I**

**The Right to Litigate**

## **Part I**

### **The Right to Litigate According to The Syrian Constitution**

Article /50/ of the Syrian constitution issued by the Legislative Decree NO. 94 of the year 2012 has stipulated that “The rule of law is the basis of governance in the country”. This means that the rule of the law does not only guarantee the freedom of the individual, but it is also the only basis of the legitimacy of the authority. The rule of the law is derived from the rule of the constitution, which places the foundations of laws and all their branches. Based on this, the constitution becomes superior to all laws. As such, all the legal rules are governed by the constitution because of the unity of the legal system which is governed by the constitution. As such, the constitution guarantees the protection of freedoms and the rights of the people (including the right to a fair trial). The effect of the constitution reaches out to cover all the branches of law.

As rights and freedoms in the legal system are at the forefront, one of the constitution’s most important duties and goals is to protect them. Since we believe that the constitutional protection of the rights and freedoms does not stop at the legal stipulation of them by the constitution. Rather, it exceeds them with a monitoring constitutional guarantees, which ensures that the legislator abides by these texts, renews and improves them. Consti-

tutional oversight is considered as a criterion of the legal state in which the rule of the constitution is ensured<sup>(1)</sup>, without it the state is not.

**In this chapter we will discuss:**

Rights and freedoms according to the Syrian constitution issued by the Legislative Decree NO. 94 of the year 2012:

Freedom is a sacred right. The state guarantees citizens their freedom and protects their dignity and safety. (article 1/33).

Homes and residential buildings are safeguarded and may not be entered or searched unless ordered by a competent judiciary authority is provided and in situations explained by the law (article 2/36).

The right to confidential correspondences, wired and wireless communication and other means of communication is guaranteed by the law (article 37).

Every citizen has the right to express his/her opinion freely whether through public speech, writing, or any other self-expression methods (article 2/42).

The state guarantees the freedom of the press, printing, and publishing in the different means of media, as well as their independence according to the law (article 43).

Citizens have the right to assemble, protest peacefully, as well as the right to strike within the principles of the constitution. Exercising these rights is regulated by the law (article 44).

**Article /51/:**

Punishment shall be personal, no crime and no punishment except by a law.  
Every defendant shall be presumed innocent until convicted by a final

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1 Sour, Ahmad Fathy. (2000, p.5), Constitutional protection for freedoms and rights, second edition

court ruling in a fair trial.

The right to conduct litigation and remedies, review, and the defense before

the judiciary shall be protected by the law, and the state shall guarantee legal aid to those who are incapable to do so, according to the law.

Any provision of the law shall prohibit the immunity of any act or administrative decision from judicial review.

**Article /53/:**

No one may be investigated or arrested, except under an order or decision issued by the competent judicial authority, or if he was arrested in the case of

being caught in the act, or with intent to bring him to the judicial authorities on

charges of committing a felony or misdemeanor.

No one may be tortured or treated in a humiliating manner, and the law shall define the punishment for those who do so.

**Article /54/:**

Any assault on individual freedom, on the inviolability of private life or any other

rights and public freedoms guaranteed by the Constitution, shall be considered a

punishable crime by the law. Thus, the Syrian constitution of 2012, has briefly stipulated the right to litigate and the right to a fair trial. However, the actual application, whether through the specified mechanisms in the laws of procedures and evidence or judicial compliance to a fair trial as defined internationally, has shown that stipulating the right of a fair trial in addition to the rights and freedoms are nothing but words without actions.

## **Part II**

### **The Right to Litigate According to the Syrian Criminal Procedures Code (CPC)**

In this part, we will cover guarantees approved by the Syrian legislator in according to the Criminal Procedures Code (CPC) issued by the Legislative Decree NO. 112 of 1950 in which the defendant has the opportunity to get a fair trial.

The law established the principle of a face to face investigation in all the different aspects of the investigation except for the witness-hearing. It also stipulated that the defendant can ask for lawyer assistance, searching detentions and prisons could take place, the right of the judiciary to inspect them. It also referred to the protection of personal freedom from arbitrary detention. So, the law obligates the general attorney, the investigative judge, and the magistrate to release all the illegal captives who were kept in governmental places that were created for such cases<sup>(1)</sup>. The law also establishes the rules of reconsideration in consistence with the current judicial system<sup>(2)</sup>

#### **The guarantees of the defendant in the preliminary investigation:**

(This stage follows the introductory stage. Considering the collected evi-

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1 Article. 425 /1/ of Syrian CPC

2 Article. 426 and its related details of Syrian CPC.

dence at the introductory stage by the judicial police, the legal adaptation of the criminal behavior is carried out in this case. Which means that the criminal behavior is now given a correct and legal description and attributed to the suspect. In addition to carrying out all the needed procedures permitted by the law to reveal the truth).

- The defendant has the right to check out the acts which are attributed to him/her in front of the investigative judge. Then, He/she is asked to provide their answers after being cautioned that he/she have the right not to provide any answers unless his/her lawyer is present. In case the defendant is unable to appoint a lawyer in the criminal cases, he or she can ask the judge to appoint a lawyer to him/her throughout the lawyers' bar<sup>(1)</sup>

### **Writing down the preliminary investigation procedures.**

- The guarantees of the defendant in the trial stage. This is when the criminal case is referred to the relevant court. Where if the act is punishable and the judge finds enough evidence to sue the defendant. Then the judge issues a decision to send the defendant to the relevant court.

- Trial Publicity: Public hearing is one of the fundamental guarantees of the fair trial that modern legislations have agreed to adhere to during the trials. However, this principle is obligatory, there are cases in which the legislator authorized secret trials<sup>(2)</sup>

### **Oral trial principle:**

- The oral trial is one of the fundamental rules of a trial, the court shall not issue the final sentencing based on evidence and sayings which were not discussed in the oral hearing. Although there is not a clear text of CPC, which states this principle, it is quite beneficial to read the papers according to article /191/, which stipulates following this principle.

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1 Article 69 of Syrian CPC

2 Article. 190 of Syrian CPC

### **The right of the defendant to appeal judgements against him/her.**

- Accept appeal regarding judgments issued in the last degree of felonies and misdemeanors and contraventions unless the law authorizes something different<sup>(1)</sup>

- Anyone judged by default may object the judgment within five days of its issuance. In case the objection is approved in form, the judgment shall be null and void<sup>(2)</sup>

- If the defendant misses the objection period, he/she has the right to appeal within a specific legal period<sup>(3)</sup>

- If the defendant surrenders or gets arrested as an implementation of a judicial decision issued by criminal courts, the verdict and all ongoing legal transactions are deemed null and void. The trial shall be repeated according to the regular standards<sup>(4)</sup>

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1 Article. 336 Ibid

2 Article. 205 and its related details of CPC

3 Article. 251 Ibid

4 Article. 333 Ibid



**Chapter II**

**State of Emergency**

## **Part I**

### **The Declaration of the State of Emergency**

There are many considerations that led us to discuss the State of Emergency, the most important one has to do with the beginning of the protest in Syria in March 2011. As well as the slogans that were heard throughout the country with many people calling for the end of the state of emergency. It is rare to find a clear understanding of the legal terms of declaring the state of emergency and ending it, especially among those who are not specialized in law. Add to this that these terms are the main legal basis on which the exceptional courts were set up and this is the biggest part of this book.

The law of the state of emergency was issued by the Legislative Decree NO.51 on 22nd December 1962. However, the state of emergency declared by the decision NO (2), which was issued by the Revolutionary Military Command Council on 8th March 1963.

The first article of the law specifies the conditions in which the state of emergency is declared, which during the warfare status, when the threat of having a war, or when the public security or order is at risk across the country or in specific parts due to possible internal disturbances or natural disasters.

Considering the seriousness and its effect on public freedoms, the law has set conditions for declaring the state of emergency as follows:

- The occurrence of extremely dangerous and unpredicted accidents.
- When the administrative authority can't work according to common laws and systems.
- The persistence of exceptional circumstances, which justifies considering them.
- The state of emergency is imposed during these circumstances.
- Public interest is the goal behind imposing the state of emergency.
- The emergency law should be implemented within the necessary limits.
- The administration should be subjected to judicial practices, this includes compensating individuals for damages inflicted due to the procedures of the state of emergency.

Regarding the authority which imposes the state of emergency, the decree specifies in its second article that in this case, the state of emergency is declared by a decree issued by the cabinet, chaired by the president. Two-third of the cabinet must attend. Then the decree should be presented to the parliament during its first meeting.

The law also specified the restrictions covered by the state of emergency in article 4 as follows:

- Social freedoms, such as freedom of movement, residence, passing through certain places at certain times, allocating opening times for public places, evacuating or isolating some places, and organizing and restricting transportation.
- Political freedoms such as the freedom of gathering in groups, protesting for political purposes, meetings of political parties, political and union

lectures, in addition to the activities of civil society organizations.

- Economic freedoms, where guardianships can be imposed on companies and institutions, seizing of movable and immovable properties, expropriation for the benefit of the state, and properties confiscation.

- Cultural and intellectual freedoms, such as censoring, controlling, and seizing messages, communications, publications, and leaflets. In addition to abolishing their work.

- As for the competent jurisdiction, according to the article.6 of the declaration of the state of emergency law 51 of 1962 'crimes against the state security, public safety, and public authority are referred to the military court).

**Notice:**

The state of emergency applies to everyone in the country, including Syrians and non-Syrians.

## **Part II**

### **Ending the state of emergency**

The authority in charge of declaring the state of emergency is the one to end it through one of the following ways.

- A clear desire to end the state of emergency by the same authority, which declared it, or by a law that abolishes earlier legislations, both explicitly or implicitly.
- If the parliament refuses the decree, which declares the state of emergency, one it is discussed.
- When new authority replaces the old one in the areas where the state of emergency was declared.

The state of emergency in Syria was ended by decree 161 on 21st April 2011. This was after the protests of March 2011 where one of their demands was to end the state of emergency. However, in the reality was different as the state of emergency was not ended. Rather, the implementation of the emergency law became more active than any other time before.

Ending the state of emergency is against the purposes of the Legislative Decree NO. 51 of 1962. The state of emergency is ended despite internal

disturbances, which later evolved into an armed conflict, took place.

- The judicial authority is independent, the president ensures its independence. the supreme judicial council assists him on this.

- The supreme judicial council also guarantees the provision of the necessary guarantees to protect judiciary independence.

- Judges are independent, there is no authority over their judgement other than the law.

- Honor, consciousness, and impartiality of judges guarantee people's rights and freedoms.

- The law regulates the judicial system in all its categories, types, and degrees, and sets rules and specialties of the jurisdiction of the various courts

The judicial authorities in Syria are divided into three categories.

Ordinary judiciary.

Administrative judiciary.

Exceptional judiciary.

Each category includes different types and levels of courts regulated by special laws, which specifies its specialties. This is either by regulatory laws or by other independent laws.

In the following chapter, we will cover both ordinary and exceptional judiciaries.

**Chapter III**

**Types of Judiciary in Syria**

To achieve a clear understanding of the exceptional judiciary, we must provide a brief introduction of types of the judiciary in Syria, which are ordinary, administrative, and exceptional judiciaries. In this chapter we will also focus on the difference between both ordinary and exceptional judiciaries, this will help us understand the grave violations of the exceptional judiciary. Then, we will explain all the exceptional courts that are mentioned in this book after having a clear understanding of the meaning of the exceptional judiciary.

## **Part I**

### **Ordinary judiciary**

It is the authority which is specialised in considering all disputes and has the general jurisdiction to resolve them. Nothing gets out of its jurisdiction unless the special legislator assigns it to another party with a special text.<sup>(1)</sup>

According to article 32 of the judicial authority law NO. 89 of 1961, the courts are formed of the following:

- a-Personal status courts.
- b-Juvenile courts.
- c-Magistrate courts.
- d-Courts of the first instance.
- e-Courts of appeal.
- f-Courts of cassation.

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1 Article. 125 judicial authority law no. 98 of 1991

## **Part II**

### **Exceptional judiciary**

The exceptional judiciary is considered one of the most dangerous systems of violating the right to a fair trial. It is also considered to be inconsistent with the principle of judicial independence. The standards that govern the exceptional judiciary are extremely inadequate to achieve justice.

- No exceptional judiciary bodies should be formed because this is a detraction of the judicial authority, whose jurisdiction to settle all disputes must be complete.<sup>(1)</sup>

- Undoubtedly, exceptional judiciary undermines the legal justice in general, and the judiciary system specifically, has a negative effect on the judicial guarantees of human rights and undermines the guarantees, which ensures the rights mentioned in both national constitutions and international laws. Therefore, it reports several forms of violations of the principle of separation of powers such as:

- Executive authority interferes in justice procedures and receives special judicial powers.

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1 The principle of equality before the judiciary, a research published in the issues NO. (1-2) of the Syrian Lawyers magazine of 1993/p. 30, by Nasrat Hayder

- Theory of the acts of sovereignty expands to remove some of the actions or decisions of the executive authority from judicial control.

- The interference in establishing judicial bodies by authorizing the exceptional courts with broad powers and extending their jurisdictions.<sup>(1)</sup>

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1 The course of the exceptional judiciary in Egypt- an article published in the “Etihad” newspaper- 2001, by Dr. Ammar Ali Ha



**Chapter IV**

**Supreme State Security Court**

## **PART I**

### **The Establishment of Supreme State Security Court**

As the protests demanded to put an end for the emergency status, they also called for the abolition of Supreme State Security Court (SSSC) which was for decades specialized with the prosecute of prisoners of conscience and political offenders. That is why we have seen that it is of a great importance to start our discussion on the exceptional courts by talking about the SSSC. to provide the readers with a clear idea about this court, which affected the lives and freedoms of hundreds of detainees before the outbreak of the protest in 2011.

Supreme State Security Court was established by Legislative Decree No. 47 of 28/3/1968, and It was established as an alternative to the exceptional military courts. The legal basis for the establishment of both courts is the Emergency Law promulgated in 1962.

Supreme State Security Court is an exceptional court exempt from adherence to the fundamental procedure contained in the legislative acts in force in all stages of the trial.

- It consists of two civil judges and a military judge. In addition to that, its provisions are not subject to appeal and subject to ratification by the

President of the Republic who is entitled to repeal the provision, mitigate the punishment or retrial.

It is concerned with trying both civilians and military personnel and it has its own public prosecution.

- Referral to the court is by a customary order and the trial consists of four sessions: Interrogation, accusation, defense, judgment.

- Court sessions are not open to attend, and referrals' families are seldom attended it.

The trial sessions are short, and the intervals between each session and another span several months. On average, the duration of the trial in all its phases is about three years. Previously, its sessions were monitored by foreign diplomats, but without the possibility of intervention.

- Through the court's work since its establishment until the date of its abolition, its trials were devoid of the procedure of calling witnesses and listening to them.

All those referred to the SSSC are held in preventive detention by the security services prior to be referral, it is worth to mention that this detention may take months or even years.

It relies on security investigations, even though, the Syrian constitution and the code of criminal procedures prohibit this action.

- As for lawyers, the court allows the defendants to retain a lawyer, however, in case he or she cannot afford to hire an attorney the court will appoint one for him/her.

However, the role of lawyers in this court is extremely limited, because often it does not allow the lawyer to gain access to documents and files. Moreover, the court only allows written defense, not verbal defense.

Since most of those referred to that court through its entire history of work are imprisoned in Sednaya Military Prison, their lawyers are not allowed to visit them.

However, the court may permit the lawyer to visit his/her client in the court's dungeon for a limited period of time, and shortly before the session under the supervision of officers and security personnel, who interfere with the conversation between the lawyer and his/her client.

The SSSC also prevents the lawyers from attending in front of the public prosecutor or the investigative judge.

There are not many cases in the twenty years following the establishment of this court, which was significantly operationalized in 1992.

However, in 1979, members of the Arab Communist Organization were tried before this court. The trial lasted three days, five members of them were sentenced to death and executed after only 3 days of the trial.

As we previously mentioned, it was significantly activated in 1992 following an evolution in the approach of the late president Hafez al-Assad in referring the detainees to court instead of being kept remanded in custody for very long periods without being accused or tried.

Hundreds, perhaps thousands of political activists, communists, nationalists, and Nasserites, persons belonging to Iraqi Baath party, Muslim Brotherhood, in addition to Kurdish activists, independent political activists, and human rights activists were tried in this court. Sentences issued during its history often ranged from three to fifteen years' imprisonment.

In 2005 - 2006 - 2007 some characters including political activists and civil society activists were not referred to this court, rather they have even been tried before the criminal court in Damascus.

The court's work was suspended between 2008 and 2009 following riots

in Sednaya Military Prison without any justification for that and without referring the accused persons there to another court.

The most prominent charges that were indicated by the State Security Court are violating the emergency law, opposing the goals of the revolution,

publishing false news, the crime of belonging to a secret organization which was established with the intention of changing the economic or social entity of the state. In addition to offences related to criminalizing freedom of expression.

- The court has tried writers, bloggers, Islamists, and civil society activists Intensively in 2007 and 2008.

## **Part II**

### **The Abolition of Supreme State Security Court:**

The court was abolished according to Legislative Decree No. 53 of the 21st of April 2011, following the protests in March 2011, which was the abolition of this court one of its goals. It was abolished on the same day that a legislative decree was issued to abolish the state of emergency Law, and another legislative decree on the freedom of demonstration.

Article 2 of the same legislative decree stipulated that all pending cases in the SSSC shall be referred to the competent judicial authority in accordance with the Code of Criminal Procedures.

However, after almost one year of abolishing the court, counter-terrorism court was established as an alternative of Supreme State Security Court as we will see later.

**Chapter V**

**Military Field Courts**

## **Part I**

### **Military Field Courts Establishment Law**

In our view, as jurists specialized in special courts, we affirm that this court is one of the most dangerous courts in Syria in terms of its flagrant violation of the basis of the fair trial. As well as the lack of access to any judicial guarantee which puts the defendant at the risk of losing her/ his life. Especially since most of the death sentences since 2011 until the date of writing this book has been issued and executed by the Military Field Court (MFC).

The other reason for our concern, and our fear of this court, is in fact its association with Sednaya Military Prison. which is a very well-known prison in Syria, especially the part called the red building. Since most of the detainees are referred to this court, they get held in Sednaya prison, which Amnesty International has called it in its 2017 report, the human slaughterhouse.

The MFC were established by Legislative Decree No. 109, on 17/8/1968. The State of Emergency Law is the legal basis for its establishment, as it was established as an alternative to Exceptional Military Courts, which in their turn are exceptional courts that take the form of random trials.

These courts are related to the Ministry of Defense and the President of

the Republic, being the commander-in-chief of the army, and the armed forces. where death sentences are subject to ratification by the President himself, while the rest of the sentences are subject to ratification by the Secretary of Defense.

There are not many cases that display the work of the MFC in the first 10 years since its establishment. However, its activities began to emerge in the late 1970s and early 1980s, when dozens of people who belong to the Muslim Brotherhood, the Iraqi Baath party, as well as many other parties were tried.

After that period there were not many cases referred to MFC. Nevertheless, its activity has emerged since the outbreak of the protests in March 2011 and has been raising ever since until the moment of preparing this book.

## **Part II**

### **Court's Formation**

- The MFC is formed of two members and a president. The rank of President is no less than a major, while the rank of the two members is no less than a captain. The functions of the Public Prosecutor of the Court shall be performed by one or more judges of the military prosecution, appointed by the Secretary of Defense. Courts and the Public Prosecution may not adhere to the procedures stipulated in the general legislation. Currently, there are two Field Courts in Damascus, the First Field Court, and the Second Field Court.

- The MFC is based in the Military Police center in Qaboun, where the second court was established after the outbreak of the protests in March 2011 to accommodate the many files that have been sent to it. As the number of the files reached tens of thousands since 2011. It is worth to mention that one file may include the case of one or many defendants.

- The MFC can hold its hearings inside the courthouse, it can also move into detention centers and hold the hearings there.

## **Part III**

### **Court's Jurisdiction**

Article 1 of the establishment law of the Field Court (FC) states that this court has jurisdiction to consider crimes within the jurisdiction of Military Courts, if the commander in-chief of the army and the armed forces decided to refer it to them. However, this may happen only in one of the following situations: at times of war, during the military operations, in front of the enemy. This article was amended by Legislative Decree NO.32 of 1980, adding (or at times of internal disturbances). Thus, allowing the MFC to try both the military and civilians. Paragraph A of article 2 specified that war-time is the period of armed clashes between the Syrian state and the enemy, and the beginning and end of this period is specified by a Decree. This in fact, denies the legality of the referral to this court in the time being, as no Presidential Decree has been issued to state that Syria is currently at war. As all that was issued was just media statements by the Syrian president, and other officials considering that Syria is in a state of war on terror, and against the global conspiracy against it as well.

Nevertheless, the legal basis of referring defendants to the MFC, is currently under the above-mentioned amendment. Which reflects the current situation. Since the outbreak of the protests in March 2011, we started to

see that the Field Courts are dealing with crimes stipulated in the General Penal Code. It falls within the jurisdiction of Courts of First Instance of Penalty or Felonies, especially crimes against the external state security such as: spying, treason, illegal connections with the enemy, as well as undermining the prestige of the state. Moreover, the crimes against internal state security such as: discord, disturbing the serenity among the elements of the nation, crimes that undermine the national unity, or crimes under the Terrorism Law, thus they shall be referred to the Court of Terrorism. These crimes include conspiracy, establishing or being a part of a terrorist organization, and funding terrorist acts. In addition to manufacturing, smuggling, possessing, or stealing weapons, threatening to commit a terrorist act, committing terrorist act, or promoting to a terrorist act. As we see here, the referral to the Field Court is due to a random personal decision, which explains the interference of the security services and the executive authority in the judiciary authority.

Basically, this results in the so-called “conflict of laws” where the work of many courts overlaps while trying the same alleged crimes. Especially that the decision to refer a given crime to one court or the other is taken only by the heads of the security services without relying on any clear criterion.

## **Part IV**

### **Personal Specialty of the Court**

The decree on which the Field Courts were established, did not clarify the people that this court is competent to try. However, it is clear from the referral cases under Article 1 that the Field Courts are mostly specialized with military men.

Still the reality of FC's previous work indicates that the FC included many civilians who were accused of being affiliated to armed or unarmed opposition movements. Since 2011 until this very moment, most of those referred to these courts are peaceful civilian activists. Especially those who have a major influence on the movement, as the regime considers them a great danger that threatens its existence and consistency. This has been legitimized by the Syrian law by referring civilians to the FC under the amendment of the Decree NO. 32 of 1980, which added (or at times of internal disturbances).

It is worth noting that most of these people are placed in the Red Building in Sednaya Military Prison, while others are placed in civilian prisons.

Dissident military men, suspects, relatives of the dissent military men, and activists are referred to these courts, in addition to people from the areas under the control of the opposition, only because they belong to these areas and without any other reasons. It is also striking that many juveniles who are less than 16 years old are referred to these courts and tried there.

## **Part V**

### **Procedures and Sentencing**

The court decisions are issued categorically so that no appeal is acceptable. The court prohibit those referred to it from appointing a lawyer.

Death sentences are subjected to ratification by the President of the State, while the rest of the sentences are subjected to ratification by the Minister of Defense.

Currently, the President has authorized the Minister of Defense, and the Chief of Staff to ratify on the death sentences.

The President and the Minister of Defense have the power to commute, defense, or suspend the execution of the sentence or retrial.

Usually the sentences issued by the FC from temporary to life imprisonment, or execution. In addition to fines, confiscation, seizure, travel banning, dispossession of civil rights, and in some cases deprivation of nationality.

- A paragraph dedicated to the death sentences:

Most executions are carried out in the Sednaya Military Prison, where most detainees referred to the Field Courts are being held there. While those who are held in the civilian prisons are executed in the Military Police Centre or in Sednaya Prison.

The defendant is not usually notified of the death sentence issued against him/her, rather s/he knows his/her destiny only minutes before the execution. The defendant then is asked for his/her last wish, and to write it down in the implementation record, then s/he is asked to sign it with his/her fingerprint.

Executions are mostly carried out collectively, and individually in some cases. Executions in Sednaya Prison are carried out once or twice a week, and there is no fixed period for the issuance of the judgement, or for its implementation after it has been issued.

A copy of the implementation record is sent to the FC, while another copy is sent to the prison in which the defendant was imprisoned in.

The execution committee consists of the director of Sednaya Prison, the Prosecutor (Military Deputy), a representative of the Security Division, Commander of the Southern Front Division, a Medical Officer, Chief Medical Officer at Sednaya Prison, and the Grand Mufti of Syria.

The date of the execution is determined by the Minister of Defense or the Chief of Staff.

As for the juveniles who are sentenced to death, the death sentence is passed then reduced to 12 years' imprisonment due to their age. Nevertheless, dozens of executions in Sednaya Prison have been carried out against juveniles under the age of 18.

**Chapter VI**

# **Warfare Courts**

Prosecuting soldiers for being alive after bombing a given target of the regular forces and their allies by any party has happened a lot and still happening! As the judges think that the survived soldiers had conspired or escaped thus, they survived.

This is the purview of Warfare Courts as we will see in this chapter.

## **Part I**

### **The Establishment Law of the Warfare Court**

The Warfare Courts were established by the Legislative Decree No. 87 of the 1st of October 1972.

The State of Emergency Law is considered the legal basis for its establishment.

Deputy Commander-in-Chief of the Army and the Armed Forces and the Leaders of Military Forces, military troops, brigades, regiments, and the besieged battalion are given the authority to establish these courts.

## **Part II**

### **Under-study cases**

These courts are competent over the following crimes:

- Desertion.
- Contravention of military instructions.
- Insubordination.
- Rioting against the higher-ranking commanders.
- Robbery and destruction.
- Deformation to escape from the military service.
- Betrayal and spying.

In general, every crime that include soldiers' dereliction of duty against the enemy.

## **Part III**

### **Procedures**

The Warfare Court consists of three officers, one of whom is the commander, and it does not include public prosecution or investigation.

Military officers are referred to this court by order of the party who issued its establishment.

The Warfare Court does not adhere with penalties prescribed in the penal code and it has the right to impose whatever penalty including capital punishment.

Court rulings are definitive, do not accept any way to appeal, and they do not give the right to retain an attorney. The sentences of the court are implemented directly after ratification by the authority that issued the formation order. its provisions are implemented directly.

Both Commander-in Chief of the army and the Armed Forces and the authority who issued the court establishment have the right to abolish, mitigate or replace the penalty.

Therefore, it is obvious that this court is dealing with crimes committed by military men in wartime.

## **Part IV**

### **The Jurisdiction of the Warfare Courts During the Conflict**

All the local and international arrest reports and courts in Syria make no reference to the Warfare Courts.

Indeed, not mentioning the Warfare Courts despite its seriousness is quite strange, but what is even more surprising is that most Syrian lawyers and human rights activists do not have enough information about this court.

Every regiment and battlefield that belongs to the Syrian authorities, Hiz-bullah, IRGC (Iranian Revolutionary Guard Corps) and other regime militia would hold this court whenever the need arises; meaning whenever a soldier commits an offence or a crime as it is explained in part two of this chapter.

This court will be composed and hold. Then it will pass a judgment and rapidly implement it at once, however, sometimes it may take a period of time. Suspecting that a soldier or an officer may have committed an offence, or a crime is considered enough to sentence him or her in prison or to death.

We always hear about soldiers being imprisoned or murdered due to an order given by their commanders because they have either disarmed or escaped. They get imprisoned or murdered without knowing the legal mechanism for doing so. That is the essence of the Warfare courts which are considered as the legal basis for issuing and enforcing such penalties.

**Chapter VII**

**Terrorism Cases Court**

Terrorism cases court (TCC) is crucial because It is inextricably to the protests in Syria. It was established in 2012 after one year of the abolition of the Supreme State Security Court (SSSC). Obviously, the Terrorism Cases Court replaced SSSC with jurisdiction to try detainees against the backdrop of 2011 events.

The name of the court itself clearly points a finger at everyone who opposes the authorities claiming them terrorists. In this chapter, we will discuss all about this court and terrorism legislation in details.

## **Part I**

### **The Establishment Law**

In the 21st of April 2011, Legislative Decree NO.53 was issued by which State Security Court was abolished.

On the same date, Legislative Decree NO.161 was issued under which The State of Emergency law was abolished.

After one year, Law NO.22 of 26 July 2012 on establishing the Terrorism Cases Court was promulgated, and it included nine articles.

This court is considered one of the exceptional penal tribunal and its establishment was outside the international standards of courts establishment. Since some of its articles violated the Judicial Authority Law NO. 98 of 1961.

**The law of establishing the TCC was contrary to the most significant principles of a fair trial:**

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of her/ his rights and obligations, and of any criminal charge against her/ him.<sup>(1)</sup>

- Everyone shall have the right to be tried by ordinary courts or tribunals

1 Article /10 /of the Universal Declaration of Human Rights 1948.

using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.<sup>(1)</sup>

- The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.<sup>(2)</sup>

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1 Item No.5 is one of the basic principles of the judiciary's independence adopted by the UN in 1985.

2 Item No.6 of the previous source.

## **Part II**

### **The Formation of The Court**

Article /2/ of Law NO. 22 of 2012 on establishing Terrorism Cases Court stipulated the following:

a-The court is constituted by three judges in the rank of president advisors and two parties, one of them is military personnel. They are nominated by a decree passed by the High Judicial Council.

b-Investigating judge is nominated by a decree passed by the High Judicial Council. In addition to his prerogatives, he is granted the prerogatives of the referring judge stipulated by laws in force.

c-Public right in the court is represented by a public prosecution in which the chief and prosecutors are nominated by a decree passed by the High Judicial Council.

Article /5/ of Law NO. 22 of 2012 stipulated that court judgments are subject to appeal before special division established by a decree in the cassation court.

The content of these articles was a clear breach of the principle of separation of powers since it gives the President of the State the power

to appoint judges, investigating judges, prosecutors and judges of the special division of the cassation court that is competent to appeal the judgments of terrorism criminal court, violating the Judicial Authority Act which gives the right for appointing judges in courts to the High Judicial Council not to the Chief Executive. In addition to this, it violates the international standards.

Amnesty International stated that the body responsible for appointing, prompting and disciplining judges should be separated from the executive branch in its composition and in its mode of operation. It should have the principles of pluralism and equilibrium. Most of the court members should be judges and the Judicial appointment process must be made transparent<sup>(1)</sup>

On the other hand, the establishment law of the court does not provide for the presence of referral judges in establishing the court which diminish the fair trial since referral judge is a second appeal instance to the decisions of the investigating judge in all crimes and a compulsory reference for felonies.

That is why a referral judge is considered as a judicial guarantee in the preliminary investigation and as an instance to all investigating judge decisions including the decision of rejecting the release request during the court hearings<sup>(2)</sup>

Article /61/ of Judicial Authority Law NO. 98 of 1961 stipulated that by decision of the High Judicial Council, a referring judge to every Appeal Court shall be appointed and chosen by Appeals Counsel or Judges.

Judicial referral hearing is one of the guarantees in the preliminary investigation since its main job is referring cases to Criminal Court after

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1 The Guide to a Fair Trial- Amnesty International- second edition 2014. P:113.

2 Article (139-141) of the Syrian Code of Criminal Procedures.

a critical examination of them by the Investigation Judge firstly and the referral judge secondly and ensuring that they are firmly based on reality and law<sup>(1)</sup>

Article /2/ of Law NO. 22 of 2012 on criminal court establishment stipulated that there must be a military judge- ministry of defense.

This mixed exceptional feature undermined the independence and the neutrality of the court.

So, a military judge in criminal courts would violate the guarantees of a fair trial.

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1 The Code of Criminal Procedures- part II, p:241, BY Dr. Hasan Jokhadar.

## **Part III**

### **Court's Jurisdiction**

Article /1/ of Law NO. 22 of 2012 on terrorism cases court in Syria stipulated the establishment of a court competent to try terrorism cases in Damascus and ,if necessary, more than one division may established by decision of the High Judicial Council.

Paragraph /A/ of article /3/ stipulated that the party responsible for the terrorist crime should be identified and referred to the court.

“ Terrorism cases court would have jurisdiction over terrorist crimes and referred crimes by the public prosecutor's office .”

According to these articles, this court has jurisdiction over terrorism cases envisioned under anti-terrorism Law NO. 19 of 2012 and over referred crimes by the public prosecutor's office.

Its headquarters is in the Syrian capital city of Damascus and ,if necessary, more than one division may established by decision of the High Judicial Council.

It is based in the Ministry of Justice in Damascus and it composed of three criminal divisions. president of the first criminal court is considered the president of terrorism cases court. There is one investigation judge for juvenile trial and several investigation judges distributed to the divisions, in addition to special public prosecutor for the court.

## **Part IV**

### **Personal Jurisdiction of the Court**

Article /4/ of Law NO. 22 of 2012 stipulated that the court has jurisdiction over all persons, civilians and military without distinction between civilians and military or between juveniles and adults. Its jurisdiction was comprehensive and general regardless of their states or age.

Formally, an investigation judge was appointed to consider juveniles cases. However, this article violates the international standards including Convention on the Rights of the Child 1989 in which Syria is a party to it.

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society<sup>(1)</sup>

To ensure this, the convention have agreed as follows:

- To be presumed innocent until proven guilty according to law.

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1 Article (40/1) of the Convention on the Rights of the Child 1989.

- To have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair hearing according to law.

- Not to be compelled to give testimony or to confess guilt<sup>(1)</sup>.

Article /4/ of Law NO. 22 of 2012 violates the Syrian Juveniles Law NO. 18 of 1974 and its amendments.

Article /31/ of the Syrian Juveniles Law NO. 18 of 1974 stipulated that juveniles are tried before juvenile courts.

Article /33/ of the Syrian Juveniles Law NO. 18 of 1974 stipulated the establishment of a special court in the cassation court to consider juvenile cases.

Article /34/ of the Syrian Juveniles Law NO. 18 of 1974 stipulated the appointment of juvenile judges from among judges with juvenile affairs experience.

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1 Article (40/2) of the previous source.

## **Part V**

### **Procedures and Sentencing**

Article /7/ of Law NP. 22 of 2012 stipulated that while recognizing the right to defense, the court shall not be bound by assets provided for, in current legislation, in criminal, and court proceedings.

This article exempted the court from waiving the assets listed in in the Code of Criminal Procedure. It also exempted the court from waiving the due process established before and during the trial according to international standards :

a- **Procedures provided for in the Code of Criminal Procedure:**

Chapter Four of Chapter Two related to the procedures for the functions of public prosecutors:

- Reports.
- Flagrante delicto.
- Crimes inside the housing.
- Unseen crimes.

b- **Chapter Four on the functions of investigative judges:**

- Investigation.
- Hearing witnesses, inspection, control articles.

- Summons, subpoena, arrest warrant.
- Release decision.
- Investigation judge decisions.
- Appealing investigation judge decisions.

**c-Part Three of Chapter Nine related to Criminal Proceedings:**

2-Due process before and during the trial according to international standards that guarantee a fair trial to the accused.

The right to communicate with the outside world.

The right to be brought promptly before a judge.

The Right to security from torture in detention.

The presumption of innocence in favor of the accused.

The accused person would be given the benefit of the doubt.

Not to be compelled to confess guilt.

All evidence obtained as a result of torture or ill treatment is excluded.

**So:**

Exempting the court from waiving the assets is dangerous because it keeps the defendant without guarantees and grants the court unlimited broad powers without any control. This means that the defendant does not even enjoy the safeguards in Syrian Law.

**-Sentencing**

Criminal Court render its final decisions in Terrorism Court and they may be appealed in cassation within 30 days.

Sentences of this court are often harsh and heavy.

In addition to imposing a prison sentence, the court imposes severe financial penalties<sup>(1)</sup> on convicted persons even if the elements of the crime were not completed or the sentenced does not commit a specific criminal act.

Judgements handed down in absentia: the court hearings are held in

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1 It could reach a million SYR, which the defendant along with his/her family cannot provide.

the absence of the accused person.

Individuals convicted in absentia have a right to seek a remedy, including their retrial in person especially if their absence was caused by reasons beyond their control or if they were not informed appropriately.<sup>(1)</sup>

Amnesty International called for repealing the provision rendered in the absence of the convicted person if he has been arrested and the retrial of the accused in accordance with fair and new procedures before an independent and impartial tribunal.

**Article /3/14/ D/ of International Covenant on Civil and Political Rights stipulated the following:**

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing<sup>(2)</sup>

Trial in absentia should be in the presence of the accused according to the International Standards<sup>(3)</sup>

Contrary to what has been stated, article /6/ of Counter-Terrorism Law NO. 22 of 2012:

Trial in absentia are not subject to retrial in case of arresting the accused unless the person had voluntarily surrendered to the Tribunal.

This article was contrary to article /333/ of the Code of Criminal Procedure which stipulated that if the absent accused had voluntarily surrendered to the tribunal or if he was arrested before the extinguish of the sentence imposed, the sentence and all dealing since issuing the arrest warrant or time limit decision are abolished and the trial shall be repeated according to the normal procedures.

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1 The principles of a Fair Trial in Africa, part (N) (6) (J) (2),P: 157

2 The Guide to a Fair Trial-Amnesty International, Chapter 21/2.

3 The Guide to a Fair Trial-Amnesty International, Chapter 21/2.

The justification for this is that the accused was not deprived of his most important rights to a fair trial, which self-defense.

One of the most important requirements of defense is that the accused should be informed of the charges against him with evidence supported them.

So that, S/he will have the chance to defend her/himself and refute the charges against him because self-defense may not be effective unless the accused has the right to be informed of everything regarding the case. Since the right of self-defense become ambiguous and ineffective without informing the accused<sup>(1)</sup>

This is contrary to article /7/ of Terrorism Cases Court Law NO. 22 of 2012 which recognized the right of defense of the accused.

How could the accused who is convicted in absentia to defend himself and refute the charges against him if he was arrested and the final sentence has been pronounced without having the right to retrial or appeal this invalid decision.

Under article /6/ mentioned above, judgements handed down in absentia are definite provisions and not subject to appeal when arresting the accused unless he had voluntarily surrendered.

Finally, decisions made by Terrorism Criminal Court are subject to appeal before the special chamber of Cassation Court<sup>(2)</sup> which is considered as a court of law that does not discuss the matter, but rather supervises the correct application of the law<sup>(3)</sup>.

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1 The principles of a fair trial between the guarantees of branches of criminal procedures and the conditions of international standards, Dr. ALTayeb Belwadeh.

2 Article (5) of Law 22 of the year 2012.

3 The Syrian Cassation Court comes at the top of the judicial pyramid, and it is not considered a degree of litigation, but rather a method of challenging final rulings.

## **Part VI**

### **Counterterrorism Law**

#### **Introduction:**

Several laws were issued by the Syrian legislator following the events of 2011 aimed at combating terrorism:

Counter-terrorism law NO. 19 of 2 July 2012.

Legislative Decree NO. 20 of 2 July 2012 on employees of the State connected with terrorism.

Legislative Decree NO. 21 of 2 July 2012 which amended article /556/ on Penalties promulgated by Legislative Decree No.148 of 1949 which is amended by Legislative Decree NO.1 of 2011 on the offence of deprivation of personal freedom.

Law NO. 22 of 26 July 2012 on the establishment of terrorism cases court.

Legislative Decree NO. 47 of 26 June 2012 on demobilization of military personnel who have been involved in terrorist acts.

It has to be noted that the Syrian Legislator has dealt with terrorism crimes according to the provisions of articles 304-306 of the Syrian Penal Code, offences against internal State security which had been repealed under article 14 of Anti-Terrorism Law NO. 19 of 2012.

This article abolished penalty for financing terrorism prescribed under article 14 of Anti-Money Laundering Act.

It also abolished penalty for financing terrorism prescribed under the Legislative Decree NO. 33 of 2005 with its amendments and Law NO. 26 of 2011 on smuggling and distribution of arms.

In this chapter, we will look at the most important crimes under Law NO. 19 of 26 July 2012 on combating terrorism which its provisions are reported in 15 articles.

It must be noted that all crimes under this law are criminal in nature, harsh and severe except for one article that the Syrian legislator considered it a misdemeanor and stipulated in article 10 of the law.

Law NO. 19 of 2012 contains definitions of the terrorist act, the terrorist organization, financing terrorism, penalties of terrorist acts, the promotion of terrorist acts and other offences punishable by anti-terrorism law.

### **The Offence of Terrorist Act:**

Article 1 of law NO. 9 of 2012 defines terrorism as: “every act that aims at creating a state of panic among the people, destabilizing public security and damaging the basic infrastructure of the country by using weapons, ammunition, explosives, flammable materials, toxic products, epidemiological or bacteriological factors or any method fulfilling the same purposes.”

Article 7 of terrorism law stipulated penalties for committing a terrorist act as following:

lifelong hard labor shall be pronounced and the fine should be double the amount of damage if he commits a terrorist act resulted in human impotence, partial or complete building collapse, infrastructure and state infrastructure damage.

Penalty of five years' imprisonment with hard labor if the methods used in the terrorist act only cause audible detonation.

Through the legal definition of the terrorist act, we find that the legislator intends to keep this definition general and broad and open to multiple interpretations and explanations which leads to include many crimes that are not considered terrorist subjectively in this article.

The legislator also left the definition of the means of terrorism (whatever these means) and tools, (any tool that serves the same purpose) open. He mentions them as an example not specifically.

This contradicts the penal laws whose expressions are precise, clear, and limited to meanings, without leaving loopholes that would allow for broad interpretation.

This is what makes the definition of a terrorist act not reliable in criminalization and punishment, and away from the narrow interpretation of penal laws to prevent adding acts that are not criminal.

On the other hand, this definition grants the judiciary open space to consider what it sees as terrorist acts without supervision.

Law No. 19 of 2012, which is applied by the Terrorism Cases Court, did not provide a specific definition of terrorist offences, and there is no clear standard for considering an offence: whether it was a terrorist, or not.

The law defines the terrorist act in its first article and did not provide a definition of the terrorist offence.

So, it is up to the Public Prosecution in Terrorism Court without adhering to a standard.

In this way the Public Prosecution in Terrorism Cases Court has extensive powers to define the terrorist offence without specific limits or monitoring.

(This opens the door to associate terrorism with almost any act)<sup>(1)</sup>

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1 A report by Human Rights Watch- The Use the anti-terrorist court to stifle the opposition, 25 July 2013.

### **The conspiracy:**

Article 2 of Counter Terrorism Law stipulated that the conspiracy which is aimed at committing offences provided for in this law shall be punishable by short-term hard labor.

Under this article, the law provides penalties for intentions and words before they are done.

For just having the thought, the person and the partners shall be punished with hard labor for three to fifteen years.

The Counter-Terrorism Law did not define the conspiracy. The penal code defines it in Article No. / 260 / as follows:

“The conspiracy is every agreement that was made between two or more people to commit a felony by certain means.”

In this way, the Syrian legislator provided equal penalties for all punishable forms of conspiracy under anti-terrorism law.

Whether this agreement aims to carry out a terrorist act, or to establish a terrorist organization, joining it, financing terrorist acts, training, or threat, or promote terrorist acts, the punishment is the same: hard labor from three to fifteen years (whosoever thinks of training on communication means is liable to the same punishment).

### **Financing Terrorist Acts:**

Article 1 of Anti-Terrorism Law defines financing terrorism as follows:

“Every collection or supply, directly or indirectly, of money, weapons, ammunition, explosives, means of communication, information, or other things with the intention to use it to carry out a terrorist act by a terrorist person or a terrorist organization.”

Under article/ 4/ paragraph NO. /1/, financing terrorism in addition to freezing the movable and immovable properties used (cars, communication devices, cash, apartment) shall be punished with hard labor from 15 to 20 years and with a fine, twice the value of the movable and immovable funds, or things that were the subject of financing<sup>(1)</sup>

#### Training on Terrorist Acts:

Anti-Terrorism Law singled out an article on training, paragraph / 2 / of article No./ 4 /, and it stipulated that:

“Anyone who practiced, or has trained one or more people to use explosives, various kinds of weapons, ammunition, means of communication (using means of communication or jamming the signal) or to use martial arts (even if it was without weapons) with the intention of using it to carry out terrorist acts shall be punished with hard labor from ten to twenty years<sup>(2)</sup>

#### **Threatening to Carry out a Terrorist Act:**

Article / 6 / of the Anti-Terrorism Law stipulates the following:

Penalty of imprisonment with hard labor for anyone threatens the government to carry out a terrorist act in order to force it to do or abstain from doing any act.

Penalty of fifteen to twenty years' imprisonment with hard labor if the threatening was associated with hijacking a public, private, or air transportation or if it was associated with seizing any kind of property ,seizing

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1 which means that financing is not only with money, but goes beyond that to any act, or saying. Even if unintentionally it can constitute the crime of financing terrorism! Once you answer a call from an unknown number from someone who might be involved or transfer some money that may cost years of imprisonment under the funding article ...!

2 e.g. establishing a training camp, physically equipping individuals, using weapons, explosive, or communication means with the intention of committing terrorist acts.

military objects, or kidnapping somebody.

The penalty shall be death if the act leads to the death of a person.

The offence stipulated in Article / 6 / is a new one that the legislator has not previously stipulated in the Penal Code.

The basic principle in all laws is to be punished on threat as offences against people.

As for here, the threat is targeted against the state, and its objective is to carry out a terrorist act, meaning that the perpetrator threatens the state to carry out a malicious act of a particular kind, which is a terrorist act. If the state does not submit to its requests and do or abstain from doing any act.

Means of threat: The threat may be written, secretly oral, explicitly stated, or by means.

And with the development of communication means and the Internet, committing such an offence has become common.

If the person's words contain any expression of threatening on social media or by monitoring calls made on cell phones even if he does not know or he did not mean it, this can be considered as a threat.

### **Promoting Terrorist Acts:**

Article No. / 8 / of the Anti-Terrorism Law stipulated:

Whoever distributes publications, or stored information, shall be punished by temporary imprisonment with hard labor no matter how it was intended to promote terrorist means, or terrorist acts.

The same penalty is imposed on anyone who manages or uses a website for this purpose.

This article imposes punishment on anyone promotes terrorist means, or terrorist acts, with one of the methods mentioned in it.

The terrorist act, as mentioned earlier, according to Article /1/ of Law 19 of 2012 is every act that aims at creating a state of panic among the people, destabilizing public security and damaging the basic infrastructure of the country by using any methods of terrorism.

Methods of terrorism as defined in Article No. 1 are:

weapons, ammunition, explosives, flammable materials, toxic products, epidemiological or bacteriological factors or any method fulfilling the same purposes.

We will define some means of promoting terrorist acts as stipulated Article No. / 8 / of the Anti-Terrorism Law:

Article /1/ of Media Law promulgated by Legislative Decree No. /108 / of 2011 defines publication and information:

Publication: A media medium that publishes a printed content or a content attached to a physical paper carrier or digitally and it is issued with a specific name. Periodical publication: a publication with a specific media approach issued at a regular pace.

Information: signs, texts, letters, sounds, still image, or motion picture with a discernible meaning related to a specific context.

Article /1/ of Media Law also defined media website: a website used as a medium to communicate on the network, especially the Internet with an updateable media content.

Electronic media: A media medium that adopts electronic communication technologies. In particular, audiovisual, and online media.

Some have defined the stored information: it is an automated electronic

means of keeping words in it.

These include CDs or flash drives, which its content can be known via computer.

Distribution: means by which the publication or the stored information is communicated to the interested parties.

So, whoever disseminate this information, publications, or ideas related to means of terrorism and terrorist acts of others according to what was stated with the intention of promoting it, shall be punished by imprisonment with hard labor from three years to fifteen years.

The perpetrator who manages a website is also punished with the same penalty because he uses the mentioned site to promote terrorist acts or means of terrorism.

### **The Obligation to Report: (Concealment of Felonies):**

Article No. / 10 / of Law No. 19 of 2012: “Every Syrian or foreigner residing in Syria shall be punished with imprisonment for one to three years if he was aware of one of the felonies stipulated in this law and he has not notified the authorities.

Except for Article / 388 / and what followed of the Syrian Penal Code that stipulated that the penalty imposed for concealment of felonies and misdemeanors is among the offences against the function of the judiciary.

This offence is considered one of the offences newly established by anti-terrorism law.

The penal legislator does not punish a person for not reporting information he receives about an offence.

Whereas some legal provisions require the citizen to report information

he receives about an offence, these provisions lack the criminal supporter, for example, article / 26 / of the Criminal Procedural Code which stipulates:

1-Whoever witnesses an attack upon public security or on person's life or his money, is obligated to inform the competent public prosecutor.

2-any person who comes to know of the commission of an offence is obligated to inform the competent public prosecutor.

The Syrian legislator-imposed penalty of imprisonment from one to three years according to the stipulations of Article 10 of The Syrian and foreign anti-terrorism law for not reporting felonies stipulated in anti-terrorism law No. 19 of 2012.

The question that arises here is: How can a person's knowledge of the offence be proven so that he is tried for not reporting the offence and not informing the competent authorities.

For what is the fault of a foreigner who has taken a neutral stand to be pursued as a terrorist.

There are many people who were currently residing in the opposition areas who are being tried before the terrorism court for this offence, with the impossibility of informing the competent authorities because there are no state departments in the opposition-held areas.

The Syrian legislator in the application of this article has not cared about the kinship. No one is exempt from punishment on any grounds, the offender is not exempt from the legal obligation imposed on him/her, even if he/she was a husband, a wife or one of the offender's ascendants or descendants.

At present, there is a lawsuit in progress before the Criminal Court of Terrorism against a mother who didn't inform the authorities that her son belonged to armed groups, and another was being tried for the offence of financing terrorism because she provided food to him!

## **Related Legislative Decrees:**

### **Law No. 20 of 2/7/2012:**

Article 1: every state employee regardless of the law he is subjected to if he is convicted of a decisive court judgment of carrying out a terrorist act whether he is a perpetrator, an instigator, a partner, or associated with terrorist groups or provided them a moral or material assistance in any way shall be dismissed from service and deprived of wages and salary, and of all pension rights.

### **Article 2:**

Every pensioner regardless of insurance law he is subject to who is convicted of a decisive court judgment of carrying out a terrorist act whether he is a perpetrator, an instigator, a partner, or associated with terrorist groups or provided them a moral or material assistance in any way shall be deprived of pension.

### **Article 3:**

Workers subject to the provisions of Labor Law No. 17 of 2010 whoever is found guilty of a decisive court judgment for the above-mentioned categories shall be deprived of any rights they may have on the Social Insurance Institution, or their employer in addition to depriving the convicted of his pension.

### **Law No. 21 of 7/2/2012:**

Article 1: amend article 556 of the Penal Code issued by the Legislative Decree No. 148 of 1949 and which is amended by the Legislative Decree No. 1 of 2011, to read as follows:

- 1- The offender shall be punished by temporary imprisonment with hard labor:  
If the period of deprivation of liberty exceeds one month.

If the person deprived of his liberty is subjected to physical or mental torture.

If the act is committed against an official during or in the course of his duties.

A penalty of hard labor from ten to twenty years with a fine double the amount of the sum is imposed on whoever kidnap by violence or deception of a person to seek ransom. He will be tried with the maximum penalty if the act occurred on a juvenile under eighteen years old in addition to the mentioned fine.

### **Legislative Decree No. 47 of 26/6/2012:**

Article 1: the following categories: are dismissed from service and deprived of salary, compensation, and any other sums the country offers:

- Military, armed forces, and internal security forces.
- Staff of the General Intelligence Department.
- Customs Brigade military.
- Combat service personnel.

Those who are proven guilty of participating in any terrorist act, whether they are perpetrators, instigators, partners, , or joining any terrorist group in any way.

### **Article 2:**

The categories mentioned above are deprived of pension and any other rights if they are found guilty of participating in any terrorist act whether they are perpetrators, instigators, partners, , or joining any terrorist group in any way.

### **The Law and the Legislative Decree:**

It is known that there are two types of legislation issued in Syria:

Law: It is issued by People's Assembly during its legislative sessions.

The Decree is issued by the President of the Republic outside the legislative roles. Both types have their fundamentals and legislative strength.

Legislative decree comes at the top of the pyramid among the types of decrees and is analogous to the law in its power.

It differs from it only in terms of who promulgates it, as the law is approved by the legislature ( People's Assembly), while the Legislative Decree is issued by the President of the Republic in special cases that it is characterized by speedy when the People's Assembly is out of its session. He can amend the laws. And the laws can also amend Legislative Decrees.

General amnesty and special pardon are among the reasons that abolish penal provisions in Syrian law:

### **General amnesty:**

It is called amnesty because it decriminalizes some of the criminal offences.

Article 150 of the Syrian Penal Code issued by Legislative Decree No. 148 of 6/1949 stipulated the following:

General amnesty issued by the legislature includes one or several offences and it decriminalizes them. It waives every original, subsidiary or additional punishment in addition to precautionary and reform measures unless the amnesty law stipulates otherwise.

The aim of the general amnesty in its comprehensive sense is social calm by forgetting some offences committed in poor social conditions Linked to periods of political instability so that society can continue and move to a new phase in life.

### **General amnesty has some important characteristics:**

-The substantive nature as it benefits all those involved in the offences covered by the amnesty.

-The penal nature as its effects are limited to the criminal character of the

act without prejudice to the personal rights of the victim.

-Finally, its retroactive effect as it decriminalizes the offence from the date it was committed.

The Syrian Penal Code Stipulates One Condition for A General Amnesty:

general amnesty should be issued by the legislature since general amnesty is either by a law ratified by People's Assembly or by a decree issued by the President of the Republic.

### **Special pardon:**

seek pardon of the sentence since its effect includes punishment. it is granted by the President of the Republic to abolish either the total penalty imposed on the sentenced person or part of it, or to be replaced by a lighter one.

special pardon as stipulated in Article No. 151 and what it followed in Syrian Penal Code have several conditions:

special pardon is granted by a decree issued by the head of state in which the name of the pardon, the abolished penalty, the remaining penalty if the abolishing was on part of it and the replaced penalty if found are specified. special pardon is granted only if the defendant has been tried and a penal concluded sentence not subject to any review has been issued against him.

President of the State may grant a special pardon only after consulting Amnesty Commission and it is composed of the five judges appointed by the Head of State.

Amnesty Commission studies applications for pardons referred to it. Then it expresses opinion on it and whatever its opinion was, whether negative or positive, it is just a purely advisory opinion and the President of the State has the last word in granting special pardon or withholding it.

Pardon can be conditional and one or more of the obligations stipulated in Article / 169 / may be entrusted to it:

-The sentenced person shall provide a back-up guarantee.

-Care shall be provided for the sentenced person.

-The plaintiff shall obtain all or some of his compensation for a period not exceeding two years for a misdemeanor and six months for an offence.

If the act committed is a felony, the plaintiff shall obtain all or some of his compensation within a maximum period of three years.

Finally: Special pardon only includes the original sentence and does not include sub-penalties. This is contrary to general amnesty.

General amnesty is similar to special amnesty in the fact that it does not affect the personal rights of the victim and they remain subject to the provisions of the civil law and the right to compensation remains for victim.

## **An analytical study of the most important provisions of the amnesty decrees since 2011 until 2020:**

The first legislative amnesty decree issued by the Presidency of the Syrian Republic after the outbreak of 2011 events, NO. 61 stipulated general amnesty for some offences committed before 31 May 2011.

It is considered the first amnesty decree like that since 1985.

The most important statement is that it included an amnesty for the full sentence of the offence prescribed by Law No. (49) of 1980, which is the law regulating criminalization of groups affiliated with Muslim Brotherhood<sup>(1)</sup>.

It also included amnesty for half the penalty for felonies<sup>(2)</sup> and quarter of the sentence in economic crimes<sup>(3)</sup>.

However, the Legislative Decree excluded in Article 2 the misdemeanors stipulated In the Military Penal Code No. (61) of 1950, and its amendments related to not implementing military orders (Article 112 of the Military Penal Code) and disobedience (Article 113). It did not include the military who loses their weapons (Article 133) and military personnel who belong to or establish international societies (Article 149).

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1 Paragraph (H) of the article /1/ of M.T, NO. /61/ 2011.

2 Paragraph (O) of the previous source.

3 Paragraph (T) of the previous source.

It also excluded civilians who stole objects belonging to the army (Article 135). This came to encircle the defections that have begun to appear in the ranks of the Syrian army.

It also excludes the offences provided for in some articles of the Military Penal Code No. (61) of 1950 involving the destruction of defense means and military materials (Article 139) and the military person who intends to destroy, burn or tear the records and other official papers belonging to the military authority (Article 141) in addition to the conspiracy, disclosing military secrets, joining rebels, and forming armed gangs.

Also among the offences not covered by the aforementioned legislative decree is the offence provided for in article No. (306) of the Syrian Penal Code which stipulated the penalty of imprisonment with hard labor for establishing associations with intent to change the economic and social nature of the State by one of the means provided for in article 304 of the Penal Code including the definition of terrorist acts and this is the accusation against all the politicians who were arrested by the Syrian state during the ten years preceding the events in 2011.

Accordingly: This decree ensured to release criminals and thieves from prisons.

- The President of the Republic issued the second Legislative Decree No. (72) of 20 June 2011:

- It included a full amnesty for the offences provided for in the Legislative Decree No. 13 of 1974, which includes smuggling offences except for weapons and drugs.

- A full amnesty for the offences provided for in Article No. / 43 / of Law No. 2 of 1993, which includes a penalty of temporary detention and a fine for anyone who possesses, transfers, receives or bought narcotic drugs for his personal use (drug users). And a full amnesty for the criminal offences in Narcotics Act.

- It included a full amnesty for some offences established in the Syrian Penal Code Including: petty theft, withdrawing a check without charge, and other criminal offenses.

With a clear plan to empty the prisons of criminals and drug users and flood the Syrian street with them and to create a kind of chaos among the Syrian community.

- The third Legislative Decree No. (10) was issued to grant a general amnesty for crimes perpetrated in the context of the events from 15 March 2011 to 15 January 2012.

- The Legislative Decree mentioned in Paragraph A of Article 1 granted a full amnesty for the offences provided for in some articles of the Syrian Penal Code No. (148) of 1949 including the following offences:

The crime of spreading claims aimed at weakening national sentiment and inciting sectarian strife (Article 285 of the Syrian Penal Code).

The crime of spreading false information that would damage the reputation of the State (Article 286).

The crime of inciting sectarian or racial strife and inciting conflict between sects and the different components of the nation (Article 307).

The crime of establishing secret groups and associations if their purpose was illegal and did not inform the authority after they were asked to do so (Article 327-328).

Legislative Decree No. 10 of 2012 stipulated in paragraph / b / of Article / 1 / a full amnesty for the crimes mentioned in Legislative Decree No. 54 of 21/4/2011 including the Law on Peaceful Demonstration which is punishable in Articles 335 to 338 of the Penal Code promulgated by Legislative Decree No. 148 of 1949.

It also included a full amnesty for the offences of bearing and possession of unauthorized arms and ammunition by Syrian citizens if their owner handed them to the authorities within a maximum period of 31/1/2012.

And a full amnesty to military deserters provided surrendering themselves within a maximum period of 31/1/2012.

In fact, hundreds of arrests of people who surrendered were recorded.

With a clear violation of this decree and its articles, only hundreds of detainees were released, while the prisons were filled with thousands of citizens who were arrested considering the events in 2011.

As for Legislative Decree No. (71) of 2012, which provides for general amnesty for crimes committed before 23/10/2012 including different kinds of criminal crimes and misdemeanors with varying degrees

starting from the most severe and ending with the minor offenses.

It also included reform and care measures for juveniles in misdemeanor, crimes of illegal possession and carrying of weapons, and crimes of fleeing.

The mentioned decree did not include the crimes stipulated in Anti-Terrorism Law No./ 19 / of 2012 which is issued following the outbreak of events in 2011.

The Syrian state added the Legislative Decree No. 23 to previous decrees, which grants a general amnesty for crimes committed before April 16, 2013 and stipulates that death penalty shall be replaced by imprisonment with hard labor for life and penalty of imprisonment with hard labor for life shall be replaced by twenty years' imprisonment with short-term hard labor.

The provisions of this decree shall not apply to crimes of smuggling arms and drugs.

The aforementioned Legislative Decree included a full amnesty for de-

sersion offences inside the state (article 100) and desertion offences outside the state (article 101) of the Military penal Code NO. 61 of 1950 (for those who surrender during / 30 / days in internal desertion and /90 / days in external desertion).

The decree also included a full amnesty for the sentences stipulated in Articles / 285 - 286 / of the Syrian Penal Code, which includes the crime of weakening national sentiment and spread lies which could harm the nation.

Article 5 of the Legislative Decree included a full amnesty for the entire misdemeanor stipulated in Article / 10 / of Law No. /19/ of 2012 which includes concealment of felonies offences<sup>(1)</sup>.

Article 5 of the Legislative Decree included an amnesty for quarter of the penalty for the offence of conspiring to commit a felony<sup>(2)</sup> if it was committed by a Syrian, and for a quarter of the penalty for Syrians who joined terrorist organization<sup>(3)</sup>

This legislative decree is the first decree that stipulated amnesty for some offences punishable by Anti-Terrorism Law No. 19 of 2012, but it didn't have a significant impact on the detainees in favor of the terrorism court because of what was stipulated in paragraph / 4 / of Article / 5 / (all other offences stipulated in Counter-terrorism No. 19 of 2012 law are excluded from this decree).

The Legislative Decree No. / 70 / issued on 29/10/2013 granting a general amnesty for desertion offences in Syria and evading military service offences if their status were settled within 30 days.

In an unprecedented step by the Syrian state to gain popular and international support, the Legislative Decree No. 22 of 2014 was issued by the

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1 See page No.77

2 Article (2) of Law NO.19 of 2012.

3 See Page NO.70

President of the Republic including amnesty for some terrorist offences, as Article /5/ of the Legislative Decree stipulated a full amnesty for the punishment stipulated in Article No. / 2 /of Anti-Terrorism Law No. 19 of 2012. The crime is conspiracy crime aimed at committing terrorist acts if it was committed by a Syrian.

It also stipulated a full amnesty for the penalty stipulated in Paragraph No. / 2 / of Article No. / 7 / of the same law. The offence is committing a terrorist act if the methods used caused only sonic blast.

It also stipulated a full amnesty for the penalty stipulated in Article / 8 / of Law No. (19) of 2012 if the offense is committed by a Syrian which includes the offence of promoting terrorist acts and a full amnesty for the penalty stipulated in Article / 10 / which includes failure to report offences.

And for a quarter of the punishment stipulated in paragraph / 1 / of Article / 5 / of Anti- Terrorism Law including means of terrorism.

Amnesty decree stipulated in paragraph /g / of Article / 5 /: Non-Syrians who entered Syria with the intention of joining a terrorist organization or committing a terrorist act are exempted from the penalty if they voluntarily surrender to the competent authorities within a month from the enactment of this Legislative Decree.

In 2015, the Presidency of the Republic returned to focus on granting amnesty to dissidents by the Legislative Decree No. 32, which includes the full penalty for internal desertion offences if they surrender within 30 days and for external desertion offences if they surrender within 60 days.

The same thing was mentioned again in the Legislative Decree No. 8 of 2016 and the Legislative Decree No. 18 of 2018.

\* On 28/7/2016, the Legislative Decree No. 15 was issued to grant an amnesty for anyone who carried or possessed arms for any reason and was a

fugitive or hidden if he surrendered himself and handed his weapons to the competent authorities within 3 months from the enactment of this Legislative Decree.

Article / 2 / of it stipulated that: whoever releases his abductees safely for nothing within a month from the enactment of this Legislative Decree., he is exempted from the full penalty stipulated in Legislative Decree No. 20 of 2013.

Legislative Decree No. 20 of 2019 was issued by the President of the Republic which includes in addition to some criminal and misdemeanor crimes committed before the date of 9/14/2019, an amnesty for some of the offences in anti-terrorism law:

- Full penalty for the offences stipulated in Article / 2 / of Law No. / 19 / of 2012, if it was committed by a Syrian (conspiracy crime).

- Half of the penalty for the offences stipulated in paragraph / 2 / of Article / 7 / related to the offence of committing a terrorist act if it caused only sonic blast.

- Full penalty for the offences stipulated in Article No. / 10 / which includes the penalty of imprisonment from one to three years for every Syrian or foreigner residing in Syria who had knowledge of one of the felonies stipulated in this law and he did not inform the authority about it.

- Article No. / 8 / of Legislative Decree No. 20 of 2019 stipulates an amnesty for one third of the temporary criminal penalty that deprives of liberty.

It means that it granting amnesty for one third of the penalty when the judgment becomes final for every convicted person of a felony that is criminalized by anti-terrorism law and punished by a temporary criminal penalty that deprives of liberty.

- The decree included an amnesty for the entire sentence for the offence stipulated in Article / 1 / of Legislative Decree No. 20 of 2013: Anyone

who kidnaps a person depriving him of his freedom with the intention of achieving a political or material goal or with the intention of revenge to seek ransom shall be punishable by hard labor for life. If the kidnapper released the kidnapped person safely for nothing or handed him/her to any competent authority within a month from the date of entry into force of this Law:

Because of the outbreak of Corona pandemic at the international level, several decisions and preventive measures have adopted by the Syrian authorities including: the promulgation of Legislative Decree No. / 6 / which granted a general amnesty for the offences committed before the date of 22 March 2020 in order to ease congestion in places of detention and in an effort to reduce the spread of infections after several coronavirus cases emerged in Syria.

This explains why this decree was issued in less than six months after the issuance of the previous amnesty decree No. 20 of 14 September 2019.

However, through practical application and after studying the articles of the new decree, numbers of amnestied persons were not large compared to those who are tried before terrorism cases court, field court and security branches.

We will summarize what was included in this decree, noting that it included most of the offences covered in Previous amnesty decrees with some slight differences and explain extensively its relation to articles of the Anti-Terrorism Law No. 19 of 2012 with a simple comparison between it and the previous decree No. 20 of 2019:

Amnesty Decree No. 6 of 2020 included seventeen articles in which it granted amnesty for the offences and penalties contained in these articles, including commutation of the death sentence , hard labor for life and life imprisonment.

The decree also excluded the offences of smuggling weapons and explosives, murders, and offences of fines of any kind.

fugitives and hidden persons are not covered by the provisions of this Legislative Decree unless they surrender themselves to the competent authorities within 6 months from the enactment of this Legislative Decree.

This decree singles out one article, which included some of the penalties stipulated in Anti-Terrorism Law No. 19 of 2012, as Article 5 of Legislative Decree No. 6 of 2020 stipulates the following:

Full penalty stipulated in Article / 2 / if it was committed by Syrian, and the paragraph is/ 2 / of Article / 7 / and / 8 / and / 10 / of Law No. 19 of 2012.

The offences specified in paragraph /2/ of Article / 5 / and paragraph / 3 / of Article / 6 / of Law No. / 19 / of 2012 are excluded from the provisions of this Legislative Decree.

Similar to the previous decree, the last amnesty decree covered the entire penalty for the conspiracy offence set forth in Article /2/ if the it was committed by Syrian and the offense of concealing felonies stipulated in Article / 10 / of the Anti-Terrorism Law.

The last amnesty decree included the full penalty for committing a terrorist act if the means used only causes sonic blast as stipulated in paragraph / 2 / of the article/ 7 / of anti-terrorism law, contrary to what was stated in the previous decree that was only includes half of the sentence.

The last decree added an amnesty for the penalty stipulated in Article / 8 / of the law No. 19 of 2012 which stipulates that:

Anyone who distributes publications or stored information shall be punished by temporary imprisonment with hard labor with the intention of promoting the means of terrorism. The same penalty imposed on everyone who initiated or used a website for this purpose (This article was not included in

the previous amnesty decree).

The Legislative Decree also included an amnesty for half of temporary criminal penalty depriving of liberty as stipulated in paragraph / a / of Article / 10 / after it was including an amnesty for third of the sentence in the previous decree (as explained previously)

Sentenced persons by final judgment shall get benefit of this article before the date of issuance of Legislative Decree No. 6 of 2020.

Amnesty Decree No. 6 of 2020 in Paragraph 2 of Article 5 excluded the offence of whoever smuggled, manufactured, possessed, stole or embezzled weapons, ammunition, or explosives of any kind with the intention of being used to carry out a terrorist act if it was associated with killing a person or causing disability.

The penalty stipulated in this article is death.

Also, the Legislative Decree considered the offence stipulated in paragraph / 3 / of Article / 6/ are excluded from the provisions of this decree, which states that if the threatening was associated with hijacking a public, private, or air transportation or if it was associated with seizing any kind of property ,seizing military objects, or kidnapping somebody and the act leads to the death of a person, the penalty shall be death.

## **Conclusion:**

Most of the provisions of the special criminal courts, which are not governed by the fair trial, are based on initial confessions before the security authorities, which do not respect human rights norms and use inhuman means to make detainees confess before investigation and trial. This confession is the only evidence in the pending case before these courts, which adopt the principle of presuming conviction for the accused initially not innocence!

The principle of suspicion is interpreted against the accused not in his favor.

The principle of confession is the master of evidences which is adopted by prosecutors, investigation and criminal courts as an evidence of conviction without regard to the international condition or standard that says: no confession or statement will be admissible in court if it is obtained under torture.

The right we are talking about has been clearly adopted in the international human rights treaty which is the hard core that must not be transgressed even in the most difficult circumstances in a country.

Article fifteen of the Convention against Torture of 1984 states the following:

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture 1975 states the following:

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

Article (3/14 / g) of the International Covenant on Civil and Political Rights 1966 stipulates that:

Not to be compelled to testify against himself or to confess guilt.

In order not to take confession is taken as evidence for the conviction and then the trial would be unfair.

This wrong basis for enacting the penal provisions adopted by the special courts in Syria contradicts the jurisprudence of the Syrian Court of Cassation, which stipulates not to take the initial statements including:

The established jurisprudence of the Syrian Court of Cassation ensures that confession itself is not an evidence in criminal cases if the accused retracts it or if it was not supported by other evidences.

“Public Authority, Resolution 521, Basis 113, 15/12/2002, Al-Alousi Group for the jurisprudence of the General Assembly Part IV, p. 94, rule 33”.

Taking statements during preliminary investigations, which were denied by those who stated them before the judiciary and were not supported by evidences, it constitutes a serious professional misconduct.

Denying one of the opponents to prove his defenses constitutes a serious professional misconduct.

“Public Authority, Resolution No. 136 Basis 479 Date 5/5/2003 published in Lawyers Magazine 2003 Issues (5- 6), p. 452”

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