

Pre-Trial Detention: Yet Another Tool for Repression in Syria



سوريون
من أجل
الحقيقة
والعدالة
Syrians
For Truth
& Justice



07 April 2022

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The circular issued by the justice minister addressing “pre-trial detention” failed to dispel the concerns of citizens in the wake of “leaked” Cybercrime Law amendments

On 23 January 2022, the Syrian Ministry of Justice, issued [Circular No. 3](#) on cybercrime, signed by the justice minister and Judge Ahmed al-Sayyed. The circular declared the criminal court judge as the guardian of the law, who must thoroughly assess the facts and circumstances of each case before issuing “pre-trial detention” orders.

The circular gave the judges greater leeway to try people accused of committing "cybercrimes" while they are at large, or even incarcerate them preventatively, should the case necessitate such restrictions on freedom, given that necessity is dependent on the judge's personal reading of the case's implications.

The circular was dispatched to attorneys general and criminal court judges. It stressed that the Syrian Law had structured the “pre-trial detention institution” building on clear provisions and a scientific basis that address two aspects, “the severity of the crime and its adverse impact on society.”

Both the seriousness of the criminal case and its social implications should be seen within the larger picture of the Syrian judiciary's common dynamics. Several articles are inscribed into the judiciary's legal frames, which are overly broad and open to interpretation by judges, including articles that touch on “undermining the prestige of the state, and that of the public employee” or “weakening national sentiment”. Any infringes under the scope of these articles are considered grave crimes, socially devastating, and disruptive of the public order. Judges have extensively manipulated these articles and are likely to manipulate the circular's contents to arbitrarily subject individuals to pre-trial detentions.

The circular opens the door for denying individuals their right to freedom arbitrarily and without compensation. Under the circular, judges might condemn individuals to months, or years, of imprisonment before the court had made their final decision regarding the case.

The circular stresses that pre-trial detention is not a part of the post-trial penalty. In other words, the duration that an individual spends in custody while under pre-trial detention will not be reduced from the ultimate prison sentence the judges will level against convicted persons. This is a blatant violation of established Syrian laws which stipulate that pre-trial prison time is part of the final penalty.

The circular entitles the Syrian judiciary to put the pre-trial detention measure to arbitrary use of a dual nature. First, the judiciary might level unfair and politically-driven sentences against the detained. Second, the judiciary might imprison the presumed “offenders”, without a final court decision, for months and years, depending on the judge's mood and without clear legal references.

The circular advises that attorneys use “pre-trial detention” cautiously and objectively, considering “the line between freedom of expression and the rights of citizens, the public administration, and public employees.”

In practice, the circular grants the judiciary, which is administratively and professionally pursuant to the minister of justice, who operates as the executive power, to take advantage of the soft line between freedom of expression and violation of rights. The line lacks a clear and all-encompassing definition, neither in the law nor in the circular itself. Building on this lack, the judiciary can prosecute any individual who criticizes the government, claiming he/she had crossed the line.

Justice Minister's Justifications

Justifying the promulgation of the circular, the justice minister and Judge Ahmad al-Sayyed said that the operative Syrian Constitution guarantees every citizen's right to express his/her opinion freely and openly, and in verbal, written, or any other means of expression. He added that the constitution also protects the citizen from assaults against his/her dignity, safety, and private life (Article 42/2).

Elaborating on the issue of freedom of expression, the minister said that this right entitled citizens to criticize and point out administrative gaps, if any are available, without turning into an offense against the Public Administration and the people in charge of it, whether the offense targets them in person, their honor, or private lives, etc.

Under its mantle, the Public Administration covers all state employees, starting from the president of the republic and down to the lowest levels of administrative positions. By creating a direct link between the circular and the administration, Syrian authorities threaten to interpret as an "offense" worthy of "pre-trial detention" any criticism in the attempt to reveal blackmail, bribes, corruption, or failure at performing administrative duties on the part of employees.

Similar to the circular's other highlights, the offense lacks clear definitions, paving the way for personal and moody applications of the "pre-trial detention" measure and also creating room for the spread of favoritism, corruption, bribery, and financial extortion.

Vague Clarification by the First Attorney General

On 24 January 2022, the First Attorney General and judge Adib al-Mahayni made an exclusive interview with [Al Madina FM](#).

Like al-Sayyed, al-Mahayni stressed that "the present Syrian Constitution guarantees a citizen his/her right to fully and freely express their opinion."

"This right, however, stops at the borders of other people's freedom and dignity . . ." he added.

Al-Mahayni emphasized that "pre-trial detention" remains a highly sensitive subject and demanded that judges study every case depending on its merits and carefully examine all its circumstances and intricacies.

Explaining freedom of expression as it is mentioned in the circular, al-Mahayni said that "it means the right to express opinions or provide constructive criticism," without offending a person, his/her honor, or private life, regardless of the means of expression, and including via social media.

He highlighted that there should be a line between freedom of expression and encroaching on private life, as well as offending people in charge of public administrations.

One of the key questions posed during the interview was whether "pre-trial detention" would be enforced against criticism of public administration employees/working mechanism of officials in charge.

Al-Mahayni answered that criticism is allowed as long as it remains in favor of "public interest", without provocation against or offending a person, through attacking, verbally insulting, or

even branding that person with disrespectful labels. Criticism of that sort is punishable by the law.

The first attorney general did not define the exact meaning of the term “public interest”, nor when criticism is labeled as in favor of this interest, or against it. The public interest, thus, remains a free-floating signifier without root determinants, which the judiciary might use to crack down on government detractors, turning it into a tool for repression.

Pre-Trial Detention in Syrian Laws

Pre-trial detention is a "preventive measure", not a "sanctioned sentence". In other words, it is an exceptional measure by which an individual is held in custody. The judge takes this measure when he/she considers that the circumstances of the event/incident the individual is involved in necessitate it. This measure is only taken during the consideration of the case, its proceedings, and prior to the final verdict.

The operative [Syrian Code of Criminal Procedure](#) mentions an “arrest warrant”, which is of unlimited duration and remains effective until a final decision is made on the case, taking into account the text of the code’s Article 117 (second paragraph):

“If the crime is a misdemeanor and its maximum penalty is one year of imprisonment, and if the defendant has a home in Syria (permanent address), he/she must be released five days after he was interrogated. However, the provisions of this paragraph do not apply to defendants who have been previously convicted of a felony or sentenced to over three months in prison without a stay of execution.”

Considering the elements in play in the circular, people arrested on charges of cybercrime will not be released in accordance with Article 117, because cyber offenses classified as “undermining the prestigious of the state” are not labeled misdemeanors, but felonies worth a sentence of over a year of imprisonment.

According to the circular, the arrested persons will be held in detention until a final court verdict is made, ignoring the fact that court proceedings might continue for months and sometimes years.

Article 102 of the Syrian Code of Criminal Procedure states that the judge investigating felonies and misdemeanors should only issue a summons, which he/she can change into an arrest warrant “if the investigation so requires.”

Changing the summons into an arrest warrant, and then extending the warrant’s duration, are requirements that stem from the judge’s ability to detect, during the interrogation, that the defendant, should he/she be released, might obliterate the details of the crime he/she is charged off, eradicate evidence, or influence witnesses that haven’t yet been seen by the judge. However, judging whether the defendant is at the risk of manipulating the details of the crime or influencing witnesses has been deeply affected by judges’ temperaments personal biases.

A Buffer Ahead of a Tighter Cybercrime Law

The [leaked information](#) about the prospective amendments legislators intend to apply to the existing Cybercrime Law was a source for massive concern and indignation among all residents of the areas held by the Damascus-headquartered central government. People particularly fear the tightened penalties and fines imposed on charges related to “undermining the prestige of

the state.” The law will sentence “any person who uses any technological means to spread fake news on the internet that is liable to undermine the prestige of the state, threaten national unity, or stir up the public opinion” to temporary imprisonment varying between three and five years, and fines between two to four million Syrian Pounds,

These leaks are an alarming reminder of the hundreds, and maybe thousands, of arbitrary arrests witnessed in Syria before 2011, which were perpetrated by the verdicts of the exceptional Supreme State Security Court (SSSC) and similar sweeping arrests warranted later by the Counter-Terrorism Court (CTC). Residents of government-held areas see in the impending amendments on the cybercrime law an equal danger, threatening to consider any divergence from the government’s perspectives and any non-compliant opinion posted online fake news that amounts to the felony of “undermining the prestige of the state.”

Within this context, legal experts with Syrians for Truth and Justice (STJ) believe that the circular was issued for two purposes. First, it is used to confirm the government’s intention to pass the new and tighter version of the currently effective Cybercrime Law. Second, the circular is used by the government as a buffer to mitigate the expected acute reactions the law would give rise to among an already inflamed Syrian public.

The draft law poses a threat to the already deficient and almost non-existent freedom of expression in Syria, even though it is theoretically established by Article 42/2 of the 2012 Syrian Constitution, which states that: “Every citizen shall have the right to freely and openly express his views whether in writing or orally or by all other means of expression.” However, the threat of the law gains more momentum when viewed within the recently rising popular criticism of the government’s performance and failure to provide basic necessities, curb extreme price increases or address wide-spreading poverty among people in its areas, who are facing multiple living challenges and difficulties to secure heating fuel amidst continued power blackouts.

With the law, the government is sending a direct and clear message to citizens that courts shall prosecute any person who would dare to express a non-standard opinion whether writing it online, exchanging it as a message, or telling it as a mere joke.

The circular’s issuance date indicates that the amended version will soon be passed, most likely within the few upcoming months in 2022.



الجمهورية العربية السورية
وزارة العدل
الرقم: ١٩٨١

تعميم رقم « ٣ »

كرس دستور الجمهورية العربية السورية في الفقرة ٢ من المادة ٤٢ حق كل مواطن أن يعبر عن رأيه بحرية ووطنية، سواء بالقول، أم بالكتابة، أم بوسائل التعبير كافة. كما حمى المواطن من الاعتداء على كرامته وأمنه وحياته الخاصة.

وقد نظم القانون هذه الحقوق، والحريات وضبطها منعاً لانتشار الجريمة، وأعطى السلطة القضائية الحق كي تعالج كل حالة وفقاً لضررها، وبناءً على الأثر الذي تتركه في المجتمع.

- ومع انتشار وسائل التقنية الحديثة، باتت الجريمة المعلوماتية واحدة من الجرائم التي تهدد سلامة المجتمع واستقراره ووجب التعامل معها وفقاً لفصل دقيق، لذلك فقد كافح المرسوم التشريعي ١٧ لعام ٢٠١٢ هذه الجريمة وعاقب على كل سلوك غير مشروع يعقوبات تتناسب وخطورته.

- وبما أن حق التعبير قد سمح بالانتقاد والإشارة إلى أماكن الخلل في حال وجودها دون أن يتعدى ذلك إلى الإساءة إلى الإدارة العامة أو القائمين عليها في أشخاصهم وشرفهم وحياتهم الخاصة لذلك يتوجب على القاضي التمييز بين حرية التعبير وهذه الجرائم.

وبما أن المشرع قد نظم مؤسسة التوقيف الاحتياطي وفقاً لقواعد واضحة وأسس علمية، تعتمد على خطورة الجريمة وآثارها السلبية على المجتمع، مع الإشارة إلى أن بقاء الفاعل طليقاً في بعض الحالات يزيد من جسامة الأضرار، ويؤدي إلى تكرار الأفعال، إضافة إلى الخوف من عبثه بالأدلة، ومن فراره أو من ردة فعل المجتمع عليه.

لهذا كان من واجب القاضي الجزائي الحارس على تطبيق القانون أن ينظر في ظروف وملابسات كل قضية؛ ليكوّن قناعة موضوعية وواقعية تنسجم مع تلك المبادئ والتأكيد على أن التوقيف ليس سلفاً على العقوبة، وبالتالي يتوجب استخدام تلك المؤسسة بحذر وموضوعية لمراعاة الحد الفاصل بين حرية التعبير عن الرأي، وحقوق المواطنين والإدارة العامة والموظف العام.

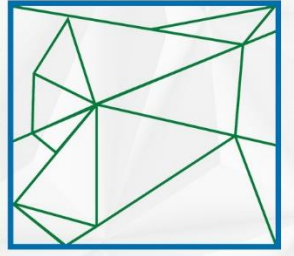
مما يتوجب معه محاكمة الفاعل طليقاً في الجرائم التي لا تستدعي التوقيف حتى صدور الحكم القضائي كعنوان للحقيقة.

لذلك نطلب من السادة المحامين العامين وإدارة التفتيش مراعاة هذه الضوابط وحسن تطبيق هذا التعميم وإعلامنا عن كل مخالفة له.

دمشق في ٢٣/١/٢٠٢٢

وزير العدل
القاضي أحمد السيد

Image 1- Circular No. 3 issued by the Syrian Ministry of Justice. Credit: The ministry's official Facebook account.



About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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EDITOR@STJ-SY.ORG