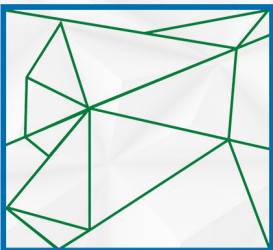


# The Supreme Constitutional Court in Syria: A Formal Independent Tool in the Hands of the President



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## **The Supreme Constitutional Court in Syria: A Formal Independent Tool in the Hands of the President**

*Nominations of “court” members by the Head of the Executive Branch  
breaches the principle of separation of powers and encroaches upon the  
works of judicial power, violating the present constitution and the Supreme  
Constitutional Court Act of 2014*

On May 16, 2022, the Syrian President Bashar Al Assad issued the Decree [No. 127 of 2022](#) stipulating the renomination of the head of the Syrian Supreme Constitutional Court with six other members of the court's plenary board, in addition to appointing four new members.

The number of the Supreme Court Members became 11 after the decree. The last nomination decree for members of the Supreme Constitutional Court, [Decree no 165](#), was issued more than four years ago on May 8, 2018.

Members of the Syrian Supreme Constitutional Court include well-known such as Muhammad Jihad Allaham, a lawyer who was reappointed as the president of the court after renewing his mandate per decree 127 article no 1.

Other renominated members, per Decree 127 article No. 2, are Judge Raslan Ali Tarabulsi, Judge Malik Kamal Sharaf, Professor Jamilah Muslim Al Sharbaji, Professor Said Abd Alwahed Nhili<sup>2</sup> (the last two are also members of the present "Syrian Constitutional Committee" held in Geneva), Lawyer Majid Rashid Khdera and Lawyer Mutasem Skeker.

Article No. 3 of the Decree 127 stipulated the nomination of new Supreme Court members, Judge Fares Mulhem Sattouf (the President of the Court of Cassation since 2020), Judge Dibo Abd Al Salam Shihadah, Judge Maisaa Anwar Al Mahrous, and Judge Wisam Badii Yazbek.

The decree for the formation of the Supreme Constitutional Court appears to consider the balance of quorum in relation to the numbers of appointed lawyers and judges, to avoid the ongoing tensions between the bar association and the ministry of justice which sometimes emerges through the course of work in courts and during the Annual General Conference of Attorneys in Syria, led by the Minister of Justice.

With these amendments, the present Supreme Constitutional Court now includes six judges, three lawyers (including the president of the court), and two academic members from faculties of law in Syrian Universities.

## **1. Formal Independence of the Supreme Constitutional Court**

Theoretically, the Supreme Constitutional Court is an "independent judicial body", as stipulated in Article 140 of the Syrian Constitution in force ([2012 Constitution](#)), that also set a minimum of seven members of the Supreme Constitutional Court without clearly indicating the maximum number of members.

Later, the independence of the constitutional court from other powers was highlighted in the Supreme Constitutional Court [Act no 7 of 2014](#), Article No. 1". Article No. 3 of the same act stipulates the maximum number of the Supreme Constitutional Court plenary board is eleven members including the president, all nominated by the president of the republic with a decree

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<sup>1</sup> PHD in International Law from Egypt. She teaches the course of "Constitutional Act and Political Systems" in law faculties in Damascus University, and she was a member of the Syrian Government delegation to Geneva talks.

<sup>2</sup> Associate Professor in the faculty of law/ University of Aleppo since 1998. LLB from Damascus University, 1948. LLM from Leipzig University in Germany, 1992. LLD from Leipzig University in Germany, 1997.

for a renewable four-year term (with undefined number of renewals), per “paragraph a”, and here lies the first problem related to the independence of the court.

Members of the Supreme Constitutional Court nominated by the president will execute his orders in order to keep their positions for the longest term possible and will likely never contradict the will of the Head of the Executive out of fear of dismissal or removal.

Meanwhile, the president of the Supreme Constitutional Court and its members take an oath before the President <sup>3</sup>, in the presence of the president of the parliament. In case of a vacant position/ expired term of one of the court members due to death, resignation, or impeachment, the President nominates a substitute for a term not exceeding the remaining term of his/ her predecessor, per law No. 7, Article 54:

*“The President nominates by a decree a president or a member as a substitute for the impeached, resigned, or dead member for a term not exceeding the remaining term of his/ her predecessor.”*

We can conclude that:

First, the nomination mechanism for members of the Syrian Supreme Constitutional Court violates the principle of the separation of powers with the definitive encroachment by the Head of the Executive Branch (the President) on judicial power. This encroachment violates the current constitution, passed in 2012, per Article 140, which stipulates that “the Supreme constitutional Court is an independent judicial body”. This encroachment also breaches the Supreme Constitutional Court Act that stipulates in Article No. 1 that “the Supreme Constitutional Court is an independent judicial body in the Syrian Arab Republic based in Damascus.”

Second, the absolute power given to Head of the Executive (the President) to nominate members of the Supreme Constitutional Court, in fact turns court members to administrative officers and not members of an independent judicial body, per Article 141 of the 2012 constitution and Article 3/ paragraph (a) of the Constitutional Court Act. Therefore, those members are vulnerable to impeachment at any time without any parameters or standards to guarantee an independent decision-making process. Third, in case of a vacant position/ expired term of one of the Constitutional Court members due to death, resignation, or impeachment, the President nominates a substitute for a term not exceeding the remaining term of his/ her predecessor per law No. 7, Article 54:

*“The President nominates by a decree a president or a member as a substitute for the impeached, resigned or dead member for a term not exceeding the remaining term of his/ her predecessor.”*

Although Act No. 7 of 2014 tried to create a smokescreen by giving most of the court’s plenary board the authority of impeachment (Article 53), the President and intelligence bodies are still able to suggest to other members to impeach the members they do not want, and other members will not hesitate to do so to guarantee their positions for the next term of mandate. Above all, it is inconceivable in Syria that any member to oppose the President, because the latter nominates

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<sup>3</sup> Per act no 7/ article no 7, they take the following oath: “I swear to God to respect the country’s constitution and laws and do my duty impartially and honestly.”

only those approved by his allying intelligence services, who live in Syria outside the law or even above the law.

## **2. Court members' salary and compensation do not exceed 24 US dollars:**

Members of the Constitutional Court receive a monthly salary of 80 thousand SYP (less than 21 US dollars) and a compensation of ten thousand SYP (less than 3 US dollars), per Act No. 7/ Article 57, based on the exchange rate of the one US dollar in the black market (sales: 3945 SYP and purchase: 3980 SYP).

The more fundamental question remains the ability of a Supreme Constitutional Court member, if theoretically not affiliated with any party or authority, to be financially independent, without any corrupted connections with the executive authorities while receiving a monthly payment not enough for living and securing basic needs? The low income puts those members under the mercy of securing personal and family basic needs and threatens their independence.

This low salary raises doubts about how far the decisions of a member of the Constitutional Court can be independent and impartial in the case of his/her inability to attain their financial independence and avoid illegal acts for profit or favoritism of certain sides.

The little money the constitutional court members are receiving implies that the court's authority to draft the court's budget and endorse it may also be dysfunctional.

## **3. Dysfunctional powers of the Supreme Constitutional Court**

Theoretically, the Supreme Constitutional Court has powers related to sensitive issues such as monitoring governance and institutions of the Syrian State, as stipulated by Act nNo. 7 of 2014. These powers and authorities include but are not limited to:

**The judicial control over the constitutionality of legislations, regulations and statutes and annulling them, but this control is formal and dysfunctional.**

This power is especially dysfunctional when the laws and decrees under control are issued by an executive body. None of the constitutional court members will dare to control or discontinue legislations as long as they are issued by the highest executive authority (the President) or other affiliated actors (ministers, governors, etc.).

We have not witnessed any previous case where the constitutional court discontinued a law issued by the president or the parliament.

For highly problematic ministerial circulars in terms of their legality, they are typically discontinued with a subsequent circular by the same minister who issued them, creating a case of confusion and lack of trust in the implementation of laws.

Here, we must recall the only decision made by this court in 2019 that cancelled some of the articles of the State Council Law (Administrative Jurisdiction) – a desperate attempt to by the Syrian Government to mute the voices criticizing the lack of constitutional court decisions to discontinue or amend any law since it was established, around fifty years ago.

Even if that decision was not plotted, is it possible for the constitutional court to issue only one decision for those decades, with so many legislations that contradict the constitution and violate human rights and freedoms.<sup>4</sup>

### **Issue opinions on the constitutionality of bills and legislative decrees and on the legality of draft decrees at the request of the President of the Republic (Article 16), and opinions on the constitutionality of bills and proposals at the request of the president of the parliament (Article 17).**

We see that the mentioned articles are insufficient because they do not clarify whether this opinion is obligatory for the requesting actor or not. With the lack of provision and following the maxim that says, “The unconditional status shall apply”, the opinion of the constitutional court is nonobligatory, and the requesting actor can issue the law or the decree in contrast to the court’s opinion, supposing that the latter eccentrically mentioned that bills were unconstitutional. In addition, we think that the legislator intentionally ignores the opinions of the court since the president of the parliament is notified of them without publishing them to the public.

### **Monitoring presidential election procedures and announcing names of accepted candidates for presidency (Supreme Constitutional Court Act/ Articles 18 to 27).**

Another formally practiced power by the constitutional court in the recent Syrian presidential elections in 2021.

### **Monitoring the High Judiciary Committee for Presidential Elections, electoral sub-commissions and polling station committees as stipulated by the General Elections Law (article no 28 to no 30 of the Supreme Constitutional Committee Act).**

We can conclude that the “High Judiciary Committee”, supervised by the Supreme Constitutional Court whose members are nominated by the President, is a dependent partial body too that is indirectly subordinate to the President. Accordingly, its decisions are totally void.

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<sup>4</sup> These laws include but are not limited to: Emergency Law No. 51 of 1963, Law of Establishing the General Intelligence Directorate No. 14 of 1969 that granted intelligence members immunity from prosecution, “Ppposing the Aims of Revolution” Law No. 6 of 1965, Decree No. 109 of 1968 to establish military courts, the Anti-Terrorism Act No. 19 of 2012, the Law of Establishing the Anti-Terrorism Court No. 22 of 2012 which exempts military and anti-terrorism courts from adhering to due process during tribunals.

## **Resolving issues relating to the validity of the election of the President of the Republic and of deputies to the Parliament (Articles 19 and 20).**

This power does not exist in terms of the presidential elections because the President is the one who appointed members of the constitutional court. Only limited authorities remain to this court in terms of parliamentary elections, with candidates who have no connections with intelligence agencies.

## **Conducting procedures relating to the trial of the President of the Republic (for high treason only) Act No. 7 of 2014 /Article 35 and Article 117 of the present Syrian Constitution.**

This power is problematic because the charge itself is broad, undefined, and ambiguous. It cannot be practically and legally evident with a president in power who has unlimited authorities. It is illogical for a court to try the person that appointed its members. In addition, accusing the President must be based on a decision by the parliament after an open voting and approval of two thirds of the members in a private session proposed by at least one third of the members (present Syrian Constitution/ article 117 and Act nNo. 7/ Article 36). This is impossible taking into consideration the way members of the parliament are “elected”, more precisely nominated, which is evident in the provision of parliament public voting, not to mention that the “high treason” crime is undefined and unspecified in Syrian laws and has no defined penalty. Even the Syrian Constitution stipulates that “*no penalty without law*” (Article 51), confirming that the power given to the Supreme Constitutional Court is void.

## **Power to decide on the defenses referred to Constitutional Court by the courts during an appeal against the constitutionality of a legal provision**

On a practical level, we find that those authorities are dysfunctional and have scarcely been practiced so far, because the Syrian legal system does not allow a lawyer, affected by the implementation of a legal provision contradicting the present constitution or any local legislation, or its defender to directly resort to the Supreme Constitutional Court (first instance proceeding, appeal or cessation...).

Law No. 7 of 2014 limits this authority (referring laws from ordinary courts to the constitutional court), violating the rights of Syrian stakeholders affected by the implementation of illegal and unconstitutional legislation. For instance, law No. 66 of 2012 and law No. 10 of 2018 are unconstitutional. They strip Syrians from their property and housing rights which should be granted to them per Article 15 of the present Syrian Constitution of 2012, confirming that private property, whether collective or individual, is protected and may only be removed for public benefit and for a compensation equal to the real value of the property. In addition, that law contradicts the provision of Article No. 771 of the Syrian Civil Code issued with the legislative decree No. 48 of 1949, stipulating that no one can be deprived of their property except for cases established by the law and for a just compensation.

Thus, Syrians have no legal means to null the unconstitutional laws and provisions, which creates a gap in the authorities of the Supreme Constitutional Court.

It is unconceivable for the Constitutional Court whose members are nominated by the President to look into the constitutionality of a law issued by the President although there are many laws with legal and constitutional violations.

Thus, the powers of this court are formal and limited to issuing nonobligatory opinions about some laws issued by the parliament, with most of the legislations issued by the President, and they are only discussed in a formal way when referred to the parliament.

### **Above all, the Supreme Constitutional Court has no right to look into laws which the President of the Republic submits to public referendum and are approved by the people**

The authorities of the court here are limited by the law and it is well-known that most referendums in Syria result in 99% of people approval.

## **4. Conclusion and Recommendations**

The Supreme Constitutional Court in Syria is a completely dysfunctional body and unable to conduct the tasks assigned to it per the constitution and the act regulating its work, as clarified above. In order to practice its role properly, this court must be totally independent from the executive power and its leverage by removing authority to nominate members of the Supreme Constitutional Court by the President and instead grant this authority to multiple parties so that none of them has the power to make the absolute decision. For example, the president's office nominates twice as many members of the court and the judicial power represented by the Higher Council of the Judiciary (which must also be free from the control of the executive power) also nominates twice as many members of the court. Then names are referred for parliamentary voting and the candidates with the higher votes will be members of the court.

The mandate of the members of the court must also be no longer that the mandate of the members of the bodies that nominated them. In France, for example, section 7 of 1958 constitution, the constitutional council is composed of nominated and permanent members. The nominated members are nine and are mandated for nine years, and one third of them is renewed every three years, nominated in participation between the President, the President of the National Assembly, and the President of the Senate, each selects three members. The permanent members are members for life.

The Constitutional Court must also have its own budget. Law No. 7 (Article 9- Paragraph c) about the court's authority to draft its own budget and endorsement must be practically enforced.

The current legal frame regulating the formation of the Constitutional Court and its work clearly contradicts the non-derogable non-suspensible international legal norm about the independence of the judiciary system.

The first and most important condition for the independence of the judicial system is the separation of powers so that judicial bodies have the ability to make completely independent

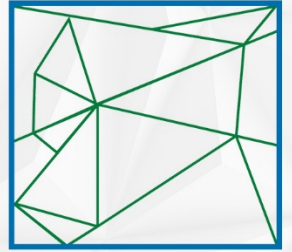


decisions from the legislative and the executive powers, as confirmed by the Human Rights Committee's comment on Article 14 of the International Covenant on Civil and Political Rights.

Since the independence of the judiciary is absolute, all procedures to appoint judges – on all levels – protecting, promoting, suspending, and dismissing them must be independent from any interventions of the executive power, a basic condition that must be protected by the constitution and the regulating laws so that the state is obliged to respect, protect and effectuate this right.

Accordingly, the current regulatory framework of the Syrian Supreme Constitutional Court enabling the executive power, represented by the President's direct and indirect authority over the court, is a clear and ongoing violation of the right of judicial independence. In addition, this serious and systematic violation will have negative consequences on rights because of the inability of the constitutional court to practice its supposed powers concerning any laws or provisions that may violate other rights as clarified in this report.

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## 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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