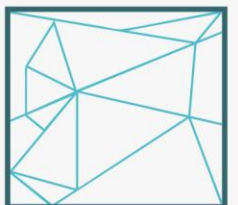


# Syria: The Minister of Justice Powers in Transitional Government: Reform Imperatives and Legal Constraints



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## 1. Introduction

As Syria goes through a transitional phase, important questions emerge regarding the legality of several decisions made by the caretaker government [led by Eng. Mohammed al-Bashir](#),<sup>1</sup> particularly those related to the judiciary. This discussion is crucial because the current government is a temporary entity that lacks full constitutional legitimacy, which limits its powers, especially when it comes to enacting significant changes to the judicial system. Moreover, the independence of the judiciary is a fundamental principle in any modern legal framework. This raises concerns about potential interference by the Executive in judicial matters during this critical time.

This paper examines the legal framework governing [Minister of Justice](#) Shadi al-Waisi's powers within the caretaker government. It specifically focuses on how certain decisions, such as the abolition of judicial positions, the dismissal of judges, and the suspension of appeal deadlines, align with constitutional and legal principles. Additionally, the paper assesses the implications of applying Sharia provisions in place of positive laws.

The present paper also discusses the legal and political risks stemming from these decisions and assesses their effects on judicial independence and the rule of law.

Based on the legal analysis conducted for the present paper, we will provide recommendations for the new Syrian government at the end of our discussion. This paper emphasizes the importance of maintaining legal legitimacy, enhancing judicial independence, and ensuring compliance with national laws and international human rights standards. These measures aim to prevent the Executive from overstepping its powers and to protect the judiciary as an independent institution responsible for delivering justice and upholding the rule of law during the transitional phase.

## 2. The Legal and Constitutional Framework of the Caretaker Government

After the collapse of the previous regime and the overthrow of the Syrian government, an interim Syrian government was established. This government functions as a caretaker and lacks strong constitutional legitimacy, which limits its powers. In comparative legal and constitutional systems, interim or caretaker governments are understood as **“transitional authorities that do not possess the full powers of permanent governments. Their primary**

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<sup>1</sup> According to the [biography](#) published on the Salvation Government's website in Idlib Governorate, Mohammed al-Bashir became the Prime Minister of the Salvation Government in January 2024. Before this role, he served as the Minister of Development and Humanitarian Affairs within the same government. Al-Bashir earned a degree in Electrical and Electronic Engineering from the Department of Communications at the University of Aleppo, which he received in 2007. He also obtained a degree in Sharia and Law from Idlib University in 2021. Mohammed al-Bashir was born in 1983 in Jabal al-Zawiya, located in Idlib Governorate.

**role is to manage administrative and judicial processes without making significant changes to the state’s legal framework.”<sup>2</sup>**

From a legal standpoint, the interim government is expected to adhere to the established principles of constitutional law, particularly the concept of a “caretaker role.” This role restricts interim governments to managing day-to-day operations without making significant changes. As such, they do not have the authority to enact new legislation or implement permanent structural reforms, especially concerning the judiciary. This approach is in line with the principle of “continuity of the state,” which requires transitional authorities to respect existing laws and operate within their boundaries, except in cases that justify exceptional legislative measures. When such interventions are necessary, they must be both time-limited and specifically defined in purpose<sup>3</sup>.

The caretaker government primarily focuses on maintaining the operation of public facilities in the country. Its role is restricted to routine activities and does not encompass actions that create or alter legal systems, such as proposing new laws, amending the constitution, or imposing international obligations through agreements, grants, or loans.

According to the principles of the rule of law, the judiciary operates independently from the Executive.<sup>4</sup> Thus, any interference by the caretaker government in judicial matters – such as appointments, dismissals, or decisions affecting its structure – constitutes a legal violation of its authority. Moreover, any attempt to replace Islamic provisions with secular laws without a clear legal basis undermines the principle of legitimacy, which mandates that all government actions must be grounded in existing law.

### 3. Powers of the Minister of Justice in the Caretaker Government

In modern constitutional systems, interim governments serve as transitional administrative bodies that function within strict legal limitations. These restrictions prevent them from making permanent decisions that might alter the state’s legal framework or the distribution of powers within it. As previously noted, these governments obtain legitimacy from the

<sup>2</sup> Dr. Ahmed Hassanein Ehab, [The Constitutional System of the Caretaker Government](#): A Comparative Study, Publications of the Faculty of Law, Menoufiya University, Egypt.

<sup>3</sup> Many interim constitutions worldwide offer similar examples of limitations on the powers of transitional governments. For instance, the Iraqi Interim Constitution of 2004 and the Tunisian Interim Constitution of 2011 explicitly restrict these governments from handling day-to-day affairs without implementing lasting changes. In Syria, although there is no specific constitutional text detailing the interim government’s powers, general constitutional principles, and public law rules mandate that it operates within established limits. This implies that the government must avoid exceeding its authority in the absence of a clear legislative mandate.

<sup>4</sup> The legal and constitutional principles that ensure the independence of the judiciary stipulate that any government interference in judicial matters must adhere to the law; otherwise, such interference is deemed illegitimate. Key principles include the separation of powers, judicial independence, the protection against arbitrary dismissal of judges, and the concepts of legal legitimacy and legality.

“constitutional legitimacy” principle. This principle requires that all state institutions, including the Executive, adhere to applicable legal texts and avoid violating them.

Therefore, in an interim government, the Minister of Justice has no authority to make decisions that significantly change the judicial system. Instead, their role is limited to managing the ministry’s affairs, administratively overseeing the courts and public prosecutions, and coordinating with judicial authorities without interfering in their jurisdictions.

Due to the lack of a clear constitutional framework outlining the limits of the caretaker government’s powers in Syria, enforcing these principles is subject to inconsistent political and legal interpretations. This raises concerns regarding the legality of certain decisions issued by the Minister of Justice in recent weeks.

One significant decision is [Decision No. 89](#), issued on 29 January 2025. This decision abolishes the position of First Attorney General in Damascus and Aleppo and establishes a Chief Justice position in each governorate. This change directly modifies the judicial structure and significantly impacts the organization of the judiciary and the distribution of powers within the legal system. Notably, the decision supports these changes purportedly based on the Syrian Judicial Authority Law, which originally did not include this position and did not grant the Minister of Justice the authority to create it.

**Historically, the role of the Attorney General has been essential to Public Prosecution. It oversees public prosecution activities within the governorates and ensures the prosecution’s independence from the Executive. The elimination of this position and its replacement with a new role that previously did not exist indicates a redistribution of powers among judicial bodies. This reflects a structural change that extends beyond a mere administrative adjustment.**

Such decisions cannot be made through ministerial decree; they require clear legislation from the legislative authority, the only body authorized to establish laws governing the judiciary. Imposing a new structure via executive decree sets a dangerous precedent that undermines the principle of legal legitimacy. Beyond its legal implications, this decision threatens the independence of the judiciary by increasing the Executive’s influence over judicial appointments and operations within the governorates.

Establishing the Chief Justice position might allow the Ministry of Justice to interfere in judicial matters, especially if those appointed to these roles report to the Minister of Justice rather than the Supreme Judicial Council. This scenario could undermine their independence, making them more susceptible to directives from the Executive instead of upholding autonomous judicial standards managed by the judiciary itself.

Without a clear legal framework that outlines the nature and powers of this new role, there is a risk it may become merely a tool for increasing Executive influence within the judiciary. This would contradict the principle of separation of powers, a [fundamental aspect of any democratic legal system](#).

Another contentious decision is [Decision No. 120](#), issued on 28 January 2025, which mandates the dismissal of multiple judges who held positions in the Arab Socialist Ba'ath Party or the People's Assembly.

In principle, this dismissal supports the concept of separation of powers and seeks to prevent conflicts of interest while ensuring that the judiciary remains neutral and refrains from engaging in politics. However, it is crucial to confirm that the dismissal procedures were conducted according to applicable laws and regulations, and in a manner that safeguards the judges' rights to defend themselves. Dismissals should ideally be issued by the Supreme Judicial Council after a fair disciplinary trial, which unfortunately did not occur in this instance.

Furthermore, the issuance of [Decision No. 75](#) on 16 January 2025, which suspends the deadlines and dates for appeals in cases pending before the courts, fundamentally infringes on the right to litigation.<sup>5</sup> This right is guaranteed by the [Universal Declaration of Human Rights](#) (Article 8) and the [International Covenant on Civil and Political Rights \(ICCPR\)](#) (Article 14). While there may be exceptional justifications for this decision in practice, suspending the deadlines for appeals can adversely affect the rights to litigation and the guarantees of a fair trial.

According to [Judicial Authority Law No. 98 of 1961](#), the Minister of Justice does not have the authority to interfere in judicial proceedings or suspend the right to litigation unless there is a legal text issued by the legislative authority or an officially declared state of judicial emergency.

Also, on 14 January 2025, the Syrian Ministry of Justice issued [Decision No. 74](#), outlining the process for submitting complaints and requests. According to this decision, complaints regarding the administrative affairs of judges, state attorneys, and Ministry of Justice employees should be directed to the Minister of Justice. Meanwhile, complaints and requests pertaining to judicial work must be submitted to the Supreme Judicial Council.

This decision aims to clarify the division of responsibilities between the Executive and the judiciary. Administrative cases will be overseen by the Minister of Justice, while judicial matters will continue to be the responsibility of the Supreme Judicial Council, the body responsible for supervising judges and enforcing disciplinary actions when necessary.

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<sup>5</sup> The right to litigation encompasses access to justice, the right to a fair trial, and the right to file a lawsuit or defend oneself without unjust restrictions. This right ensures that every individual can turn to the courts to protect or assert their rights and freedoms. It is a fundamental guarantee of the rule of law.



From a legal standpoint, this decision supports the principle of separation of powers, outlining the Ministry of Justice's role in supervising judicial administration while refraining from interfering in judicial functions. However, the practical implementation of this decision raises concerns regarding the independence of the Supreme Judicial Council. Questions arise about whether it will be able to address judicial complaints freely, without undue influence from the Executive.

If this decision is used to grant the Minister of Justice excessive control over judges by categorizing certain judicial complaints as administrative, it could threaten judicial independence and undermine judges' ability to perform their duties without Executive interference. Furthermore, the lack of clear criteria for determining the nature of complaints may blur the lines between the powers of the Supreme Judicial Council and the Ministry of Justice. Therefore, implementing this decision requires strict oversight and clear mechanisms to prevent it from being misused to pressure the judiciary or obstruct complaints against the Executive.

Additionally, On 21 January 2025, [Decision No. 88](#) appointed Anas Mansour Suleiman as the President of the Court of Cassation. This appointment raises significant legal questions about the qualifications necessary for such a prestigious position, particularly given his unclear judicial background. The President of the Court of Cassation holds the highest judicial authority in the country, and the role requires extensive judicial experience, as it involves ensuring the consistency of judicial interpretations and overseeing major cases.

Appointing someone without a proven judicial track record contradicts established legal standards in comparative judicial systems, which stipulate that the President of the Court of Cassation should be a judge recognized for their competence and experience.

Legally, the role of President of the Court of Cassation is meant for someone who has advanced through the judicial ranks, beginning with the courts of first instance, progressing to the courts of appeal, and ultimately reaching the Court of Cassation. This career trajectory offers the essential experience needed to manage complex cases and establish legal principles that serve as benchmarks for the judicial system. The Syrian Judicial Authority Law outlines specific criteria for senior judicial positions. Article 70 of the Law states that all judges must possess a law degree, whether part of the judiciary or the public prosecution. This requirement eliminates the possibility of appointing someone without a legal background to this significant position.

Regarding the presidency of the Court of Cassation, Article 76 specifies that the Supreme Judicial Council must select the President of the Court from specific designated categories. These categories include Deputy Presidents of the Court of Cassation, the Public Prosecutor, the Assistant Minister of Justice (with their approval), the Presidents of the Courts of Appeal in Damascus and Aleppo, or lawyers who have practiced for at least sixteen years.

This provision indicates that the law mandates that the President of the Court of Cassation be a seasoned judge with a background in senior judiciary positions or an experienced lawyer.

Therefore, any appointment outside these specified categories would violate the Judicial Authority Law.

The appointment of Mr. Anas Mansour Suleiman as President of the Court of Cassation raises serious concerns, as he does not belong to any standard categories and lacks a law degree. This decision departs from established legal standards governing the judiciary. Furthermore, it contradicts the [Basic Principles on the Independence of the Judiciary](#) set forth by the United Nations (UN), which emphasize that judges must possess the necessary legal qualifications to ensure the efficiency and impartiality of the judiciary. Disregarding these legal standards not only jeopardizes the legitimacy of Mr. Suleiman's appointment but may also undermine the credibility of the judicial institution and thus can erode citizens' confidence in the judiciary as an entity meant to be fair and impartial.

Appointing someone without adequate judicial experience can jeopardize the judiciary's independence. A deficiency in legal background may render this individual more vulnerable to influence from the Executive or the political parties that appointed them, potentially weakening the court's impartiality and authority in interpreting laws and ensuring a fair trial.

This appointment sets a troubling precedent, as it could lead to the politicization of the judiciary and allow unqualified individuals to occupy sensitive positions. This is prohibited under Article 81 of the Judicial Authority Law in Syria, which prevents judges from expressing political opinions or participating in politics. Such a scenario would undermine public confidence in the judicial system and its ability to deliver justice based on strong legal principles.

The appointment of the President of the Court of Cassation should follow strict criteria grounded in judicial competence and significant experience in legal practice. This upholds the independence of the judiciary and strengthens public confidence in the justice system. Any deviation from these standards could undermine the judiciary and risk its transformation into a tool of the Executive, rather than an independent institution that supervises the application of the law and the delivery of justice.

In this context, it is also crucial to [note Decision No. 204](#), issued on 12 February 2025, which refers 87 judges who have served in the Anti-Terrorism Court to the Judicial Inspection Department for an investigation into their performance since the court's establishment. Legally, this decision falls within the authority of the Minister of Justice, who is responsible for overseeing the administrative work of judges, including the power to refer them to the appropriate authorities for inspection and evaluation of their professional performance. Meanwhile, the Judicial Inspection Department, which is authorized to oversee judges' operations, is responsible for ensuring compliance with professional and ethical standards; thus, it has the authority to conduct thorough investigations to maintain the judiciary's integrity and prevent the abuse of judicial power. However, it is essential to uphold the principle of judicial independence and ensure that these procedures remain transparent and



objective. Maintaining credibility in the judicial system is essential to avoid the potential misuse of these investigations for personal vendettas or the promotion of specific agendas within the judiciary.

In light of these legal issues, it can be asserted that any decisions made by the current Ministry of Justice must conform to the principles of legal legitimacy and the separation of powers. Significant changes to the judicial system should fall under the jurisdiction of the appropriate authorities, not the interim Minister of Justice, whose role should be confined to managing routine operations. It is vital to ensure that all measures affecting the judiciary comply with existing laws and are not founded on political interpretations that could undermine the integrity of the legal system during this transitional period.

## 4. Recommendations

The Ministry of Justice must uphold legal principles that govern its authority, ensure judicial independence, and adhere to laws. Therefore, Syrians for Truth and Justice (STJ) recommends the Ministry to:

- **Ensure legal legitimacy:** Decisions that affect the state's judicial structure should only be made within appropriate legislative frameworks. The Ministry should avoid abolishing or creating judicial positions without a solid legal foundation.
- **Safeguard the independence of the judiciary:** all matters related to the appointment or dismissal of judges should be under the jurisdiction of the Supreme Judicial Council. This process must take place without any interference from the Ministry of Justice to prevent political or executive influence over the judiciary. This measure should remain effective until the Syrian Judicial Authority Law is revised by the appropriate authorities to liberate the Supreme Judicial Council from the dominance of the Executive.
- **Guarantee the Rights to Litigation and Fair Trial:** Appeal deadlines should not be suspended, and litigation procedures should not be restricted, except as provided by clear legal texts issued by a competent legislative authority or in emergency situations specified by a legal decree.
- **End the Application of Sharia Rulings that Violate Positive Laws:** All courts must adhere to current Syrian law and prevent the imposition of penalties that conflict with national laws and international standards, including flogging and other forms of corporal punishment.
- **Clearly Define the Powers of the Interim Government:** As stipulated by the Judicial Authority Law, a transitional legal framework must be created to outline the responsibilities of the Ministry of Justice. This framework must ensure that the ministry's role is confined to administrative oversight without compromising the independence of the judiciary or interfering with court operations.

- **Comply with International Human Rights Standards:** All judicial decisions and trial procedures must align with the international agreements that Syria has ratified, including the Convention against Torture, the ICCPR, and the UN Basic Principles on the Independence of the Judiciary.
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## ABOUT STJ

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

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

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