The System of Justice in Syria: Current Organization and Future Challenges

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March 31, 2010

**Introduction** - One of the most important and delicate reforms to be implemented in Syria is the one concerning the system of justice. In fact, Syria’s system of justice is quite often defined through four adjectives: corrupt, bureaucratic, slow and arbitrary. According to Transparency International’s Corruption Perceptions Index, in year 2008, Syria ranked 147th out of 179 countries, receding for the second year in a row. Instead, according to World Bank “Ease of Doing Business 2009” report and the International Chamber of Commerce, Syria ranked 174th out of 181 countries with reference to enforcing contracts, while it took 872 days to conclude a legal dispute. Already people close to the President Assad are alarmed by this level of corruption in the legislative, judicial and executive branches of the government. From the legal point of view random and non-transparent changes in investment law coupled with the lack of a real independent judiciary undermine investments especially now that Syria is trying to attract foreign direct investments in order to diversify its economy. In the last years some actions aiming towards an - at least partial reform of the judicial system - have been taken like the well-publicized establishment of an institute for the training of judges and the passing of a commercial arbitration law. Modernization of the judicial administration was understood as a fundamental tool to achieve long-term economic and social development as well pointed out some years ago through Syria’s Five Year Plan 2006-2010.

**Roots of the Syrian Legal System** - The Syrian legal system was established for the first time during the Ottoman domination but then it has undergone several modifications following the important governmental changes of the twentieth century (Syrian Arab Kingdom of 1919-1920, French Mandate, post-independence republican regime, United Arab Republic of 1958-1961, post-secession republic and the current Syrian Arab Republic). Every one of the mentioned political systems thorough which Syria underwent in the last century profoundly affected the justice system of the country. The Syrian legal system is mainly based on Civil Law traditions, Islamic and Egyptian legal traditions. The most important Syrian codifications are:

- Civil Code of 1949
- Penal Code of 1949
- Criminal Procedure Code of 1950
Civil Procedure Code of 1953

Personal Status Code that is integral part of the Legislative Decree No. 59 of 1983, currently under review

Commercial Code 2008

**Organization of the Syrian Justice System** - Both the Judicial Authority Law of 1961 and the Civil Code of 1949 are the basic documents governing the organization and functioning of the justice system. The Ministry of Justice has the role to oversee Syria’s civil and criminal courts. Defendants are entitled to nominate a lawyer to provide legal representation and in the case they have not the means to pay for a lawyer the courts provide a lawyer. Except cases involving juveniles or sex offenders trials are public. The Supreme Judicial Council is the highest judicial authority in Syria overseeing the judiciary and having the power to appoint, dismiss and transfer the Syrian judges. Chairman of this authority is the Syrian president Bashar al-Assad while the vice-chairman is the minister of justice. The other six members are five senior civil judges and the deputy to the minister of justice. It should be understood since the beginning that Syria has a dual judicial system with separated secular courts and religious courts. In fact, when in 1949 the Civil Code, the first Commercial Code (the new one dates back to 2008) and the Penal Code were promulgated the basic idea was to modernize the legal system limiting the application of customary law between Bedouin and religious minorities. In other words, Islamic religious courts continued to work in some parts of the country but their jurisdiction was reduced and confined to issues of personal status (like for instance marriages, divorce, paternity, custody of children and inheritance). Still on the same path, one additional step was done some years later in 1955 when a personal code related to many aspects of personal status was accepted. This law is very relevant because it modernized sharia through the improvement of the condition of women in Syria and a better definition of inheritance law.

The Syrian court system is composed of five different kinds of courts:

1) Civil and Criminal Courts

2) Military Courts

3) Security Courts

4) Religious Courts

5) Administrative Courts

With reference to the civil and criminal courts there are three levels of jurisdiction. These courts are organized under the Ministry of Justice and they can hear both civil and criminal matters. At the lowest level there are five different kinds of courts: the
Courts of Conciliation (Mahakim Al-Sulh), the Courts of First Instance (Mahakim Al-Bidaya), The Juvenile Courts (Mahakim Al-Ahdaath), the Customs Court (Al-Makhama Al-Jumrukiyya) and the Court of Assize.

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<th>Syrian Court System</th>
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<td><strong>Civil &amp; Criminal Courts</strong> <em>(three-level jurisdiction: first-level Courts, Court of Appeal and Court of Cassation)</em></td>
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<td><strong>Military Courts</strong></td>
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<td><strong>Administrative Courts</strong> <em>(two-level jurisdiction: Administrative Courts and Council of State)</em></td>
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- Courts of Conciliation (Mahakim Al-Sulh)
- Courts of First Instance (Mahakim Al-Bidaya)
- Juvenile Courts (Mahakim Al-Ahdaath)
- Customs Court (Al-Makhama Al-Jumrukiyya)
- Court of Assize

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<th>Supreme State Security Court (SSSC)</th>
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<th>Economic Security Courts <em>(Abolished in 2004)</em></th>
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<td>Spiritual Courts</td>
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*Source: Alessandro Bacci (2010)*
All the cases brought in front of the first four types of courts are heard by a single judge who is assigned jurisdiction according to the nature of the case. The fifth first-level court is the Court of Assize that hears cases where the punishment may exceed a three-year imprisonment time. Decision taken by the Conciliation Courts, Courts of First Instance and Court of Assize may be appealed to the second level which means the Court of Appeal or sometimes to the Court of Cassation. There are thirty Courts of Appeal in Syria and seven of them (three criminal and four civil) are located in Damascus while one civil court and one criminal court are located in every Syrian district. It is true that appeals are difficult to be won because the courts do not provide verbatim transcripts of the treated cases but only summaries prepared by the involved judges. The Court of Cassation in Damascus is the unique third-level court of appeals and has the power to revolve judicial issues. It should be noted that judgments made at the Court of Appeal are very difficult to be overturned. However, sometimes verdicts could be nullified by the Court of Cassation. This court is subdivided into specialized three-judge panels according to four different areas of action: civil, criminal, canonical and military.

In addition to the secular courts there are other specialized courts that possess a specific jurisdiction in dealing with particular subjects. The Military Courts have the authority to treat both civilian and military personnel. The problem with these courts is that the military prosecutor decides the venue for a civilian defendant and consequently there are continuously complains that the government utilizes military field courts in location outside established courtrooms. As a matter of fact, these military field courts do not observe all the normal procedures envisaged for the regular non-military courts.

The security courts are two: the Supreme State Security Court (SSSC) and the Economic Security Courts. The former tries political and national security cases and its judgments are not subject to appeal. At the same time this court does not use the same procedures as the courts of regular jurisdiction. In relations to the SSSC it is very important the role played by the Syrian President who has to approve a verdict or who can also nullify it and ask for a second trial. The Economic Security Courts have been abolished in 2004 but before they were the main juridical bodies in order to treat cases involving financial and economic crimes.

An administrative specialized system for disputes involving the state and its agencies exists in Syrian like in many other civil-law systems. During the existence of the United Arab Republic (1958-1961) between Egypt and Syria the Syrian Council of State (the most important administrative judicial body) was remodeled following the Egyptian template and still today there are a lot of communalities in the administrative Council of State in both countries. In Syria there are two levels of administrative courts. The second level which is the Council of State has both advisory as well as judicial functions and it is totally independent from the other courts of general jurisdiction.
The High Constitutional Court is the highest jurisdictional body in the Syrian Republic. It was established under the 1973 Syrian Constitution with three specific tasks: adjudicating electoral disputes, rule on the constitutionality of a law or a decree challenged by the president or the People’s Council and to render opinions on the constitutionality of bills, decrees and regulations when asked by the president. An interesting point is that the High Constitutional Court is not allowed to discuss about the validity of laws proposed by the president and then approved with popular referenda. The court is composed of the court president plus four ordinary judges that serve for a renewable four-year term. It should be noted that the judges are appointed by the Syrian president.

Special jurisdictional bodies are the Islamic Courts, the Doctrinal Courts and the Spiritual Courts. The first ones are related to cases regarding personal status, family and inheritance disputes between Syrian Muslims and non-Syrian Muslims that accept Islamic personal status in their own countries. The second ones are formed by a judge belonging to the Druze sect. This judge has to decide if the decisions taken by people belonging to the Druze community are clashing with the teaching of the religion. The Spiritual Courts are the judicial bodies in charge of subjects linked to personal status for Jewish, Christian and other non-Muslim groups. Decisions given by all the religious courts may be appealed to the Canonical and Spiritual divisions of the Court of Cassation.

**What are the Real Problems of the Justice System in Syria?** – The three major problems that the Syrian government has to overcome in the next year are:

1) The amount of time necessary to resolve a dispute via the courts

2) The corruption of Syria’s legal system

3) The independence of the judges

The amount of time necessary to resolve a dispute via the courts - When talking with Syrian lawyers the first complain they have in relations to the justice system of their country is the amount of time that it takes to have a dispute solved by a court. Sometimes it happens that cases last more than ten years. Probably, one reason for the delays is linked to the fact that it exists in Syria a shortage of judges. Today in Syria according to the Syrian Bar Association (SBA) there are around 1,300 judges. Recent analyses by the SBA calculate that there should be at least 3,000 judges with more court rooms in order to speed up things. Other grounds for the high number of cases per single judge is the fact that many Syrians go to court for very silly reasons without any real consideration of the evidence and the possibilities of getting a favorable sentence.
Probably, the existence of a proper supervision of the judges’ activity – this point is emphasized by lawyers – could permit to save a lot of time. It is true that in Syria there are judicial inspectors but the problem is still the same: they are few and with too many judges to be followed. The lawyers would like to have the number of these full-time inspectors – now no more than five - increased because according to them corruption is the main problem of the judicial system in Syria but immediately after this issue it clearly emerges the fact that too many judges work too slowly. It is a well-known fact that in Syria in some courts it is the notary that administers justice because the appointed judge is absent.

The Corruption of Syria’s legal system - Corruption is evident and the same government acknowledges it. In October 2005, 81 judges – that is more than 6% of the total number - were sacked for alleged corruption. The government improved the wages and insurance for the judges while at the same time reduced taxes with the aim of increasing their living standards. The idea is to attract capable people to the judge profession. It is a huge task because the level of corruption is very high both on the judges’ side as on the lawyers’ side. In fact, Mr. Mohammed Walid al-Tesh, who is the president of the SBA, recalls that every year the SBA investigates at least 400 claims of corruption between lawyers. In Syria there are today around 23,000 lawyers and between 10 and 50 are expelled every year from the SBA for professional misconduct. Syria should have better training for judges and lawyers. For this reason everyone who is able to pass the judge selection process is mandatorily send to teach for two years at the Judicial Institute before entering the real profession of judge.

The Independence of the Judges - Article 131 of the Syrian Constitution (Article 131 [Independence of the Judiciary] The judicial authority is independent. The President of the Republic guarantees this independence with the assistance of the Higher Council of the Judiciary) dating back to 1973 does guarantee the independence of the judiciary. Instead Article 133 (Article 133 [Independence of Judges] (1) Judges are independent. They are subject to no authority except that of the law. (2) The honor, conscience, and impartiality of judges are guarantees of public rights and freedoms.) stipulates that judges shall be autonomous and subject only to the authority of law.

The Higher Council of the Judiciary is responsible for the administration of the judiciary having the authority of appointing, promoting and transferring judges. The president of this council is the Syrian president while the deputy president is the minister of justice. A lot of critics are based in relation to the preponderant role played by the minister of justice. This role – although the minister has only one vote - could really limit the judicial independence. For some analysts, the presence of the minister of justice can either intimidate or strongly influence the role of the other board members. The SBA strongly denounces the lack of the judicial independence. Already five years
ago at the Ba’ath Party Conference some ideas about changing the composition of the council had been proposed. Also the former prosecutor general Ghada Murad (appointed as the Syrian prosecutor general in 1998, the first woman in the whole Arab world to held such a position) thinks that probably it should be amended Article 65 of the Judicial Authority Law bringing inside the council the president of the Court the Cassation and sending out of the council the minister of justice.

Still in relations to the independence of judges another interesting point is linked to the fact that when the investigation process is carried out there could be some heavy measures of offence to judges. In fact, during the process judges are notified and questioned about all the complaints filed against them and a report is always written. In some cases they have been referred to the High Judicial Council, a procedure that could last some years. All these mechanisms are activated with the deliberated intention of delaying the arrival to sentence.

**Actions to Reform the Judicial System** – Some steps have already been implemented, while others have been planned. Summing up it could be important for Syria to:

1) Increase the standard of living of judges and in this way attracting valuable people to the profession of judges. Positive steps such as the increase in wages, a better insurance and a reduction of taxes have already been implemented by the Syrian government.

2) Improve the quality of legal training in relations to both judges and lawyers. Currently, there are 11,500 students at the Faculty of Law of the Damascus University, while thousands more are enrolled in one of the other six law schools across the country, while few others (given the high fees) – like the Kalamoon University well focused on international law - get some law courses at the new Syrian private universities. After the law degree students have to start a two-year practical training with a lawyer. On completion of these two years they are entitled to undertake a written and oral exam set by the SBA in order to be admitted to the bar. Apart the issues linked to overcrowding at the law faculties, becoming lawyer is a tough and long process, but it is also true that - especially at the faculty of law – the curriculum is too much oriented towards abstract learning (theoretical and analytical matters with not a lot of attention to practical cases). It is now time to start implementing courses in areas such as international private law, commercial law and arbitration law (given the partial opening of Syria’s economy to foreign companies) and drawing more attention towards practical cases since the university years.

3) Fight with all available means the problem of corruption. It could be wise to establish in every governorate a committee (comprising the attorney general, the head of appeals and the oldest judicial inspector) in order to monitor court decision
The UNDP is now organizing a pilot project targeted at increasing both efficiency and transparency of judicial processes through the computerization of administrative procedures. With no doubt computerization could reduce significantly corruption. Estimates speak of an 80% reduction of unethical conduct. The difficulty here could be in finding the economic resources for bringing in all this information-communication technology (ICT). The project in Dera’a is part of a bigger project whose name is Modernization of the Justice Sector in Syria. This project is worth USD 815,000 and co-funded by the Syrian Ministry of Justice, the UNDP, the Swiss Development Agency and the Hollandaise embassy in Syria. The idea is to design a software program capable of simplifying and permitting much faster administrative court procedures. In addition to this, around 200 judges and employees belonging to the courts of the Dera’a governorate have attended computer literacy courses. The goal is to extend this pilot project also to other governorates. Also the European Union is preparing a judicial modernization project.

4) Interrogate judges only when an inspector “finds that a judge has deliberately wronged the complainer, or made a substantial professional mistake in implementing or interpreting the law. Only then should the judge be notified, interrogated and referred to the council for punishment” as the former general prosecutor Ghada Murad pointed out last year with an interview to the magazine Syria Today.

5) Implement modern and state-of–the art laws. As a good example it could be considered the commercial arbitration law (Law No. 4 of 2008) that well meets the requirement of the international business community. Probably, the issues behind the adoption of this law have been the necessity of boosting foreign and domestic investor confidence in the dispute resolution methods given the faltering capacity of the regular Syrian justice system. With no doubts this law was long awaited for in Syria but it has to be noted that drafting and then voting specific laws is only a partial solution to the real problems of the Syrian justice system. Undoubtedly, arbitration has positive features like the reduced amount of time needed to get a decision but it has also important drawbacks like the fact that it is final (unless cases of nullity) and that sometimes – especially when local companies are involved - the concerned parties do not want to implement what previously has been decided with the arbitration. If such a situation occurs the concerned parties have no other solution that recurring to the regular justice system. In other words, the introduction of arbitration law is very welcomed but it could not be considered as a pure and simple substitute of a proper and streamlined justice system.