



A case study of judicial resistance in northern Syria after the March revolution of 2011

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Abstract

Judges and prosecutors challenged oppressive laws introduced by the regime of Bashar al-Asad to curb the popular uprising of March 2011 in Syria. When some members of the judiciary became targets of the regime’s security forces, they resigned from office and formed independent councils to administer justice in regions no longer under state control. This article focuses on the first independent council in northern Syria: the Free Syrian Judicial Council (FSJC). Unlike the majority of non-state courts and councils established by groups of armed resistance in Syria, the FSJC does not belong to the category of “insurgent/rebel justice”. Rather, members of the FSJC were engaged in a form of resistance called “judicial resistance”: the capacity of judicial officers to challenge oppressive laws in their decision-making. The article argues that even after they left office, judges and prosecutors of the FSJC were still engaged in judicial resistance: they did their best to uphold the rule of law and provide services to the population despite the breakdown of public order and the fragmentation of the non-state judicial system engendered by the armed conflict.

Key words

Syria; authoritarianism; lawyers, judiciary; resistance; criminal justice system

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Resumen

Jueces y fiscales desafiaron las leyes opresivas introducidas por el régimen de Bashar al-Asad para frenar el levantamiento popular de marzo de 2011 en Siria. Cuando algunos miembros del poder judicial se convirtieron en objetivo de las fuerzas de seguridad del régimen, dimitieron de sus cargos y formaron consejos independientes para administrar justicia en regiones que ya no estaban bajo control estatal. Este artículo se centra en el primer consejo independiente del norte de Siria: el Consejo Judicial Sirio Libre (CSJS). A diferencia de la mayoría de los tribunales y consejos no estatales creados por grupos de resistencia armada en Siria, el FSJC no pertenece a la categoría de “justicia insurgente/rebelde”; más bien, los miembros del FSJC participaban en una forma de resistencia denominada “resistencia judicial”: la capacidad de los funcionarios judiciales de desafiar las leyes opresivas en su toma de decisiones. El artículo sostiene que, incluso después de abandonar sus cargos, los jueces y fiscales de las FSJC siguieron participando en la resistencia judicial: hicieron todo lo posible por mantener el Estado de derecho y prestar servicios a la población a pesar de la ruptura del orden público y la fragmentación del sistema judicial no estatal que engendró el conflicto armado.

Palabras clave

Siria; autoritarismo; abogados; poder judicial; resistencia; sistema de justicia penal

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1. Introduction

Authoritarian regimes use the laws and courts to crush political opposition and demands for reforms. The Syrian regime of Bashar al-Asad is no exception. In fact, the Asad regime introduced new legislation shortly after demonstrations spread throughout Syria to curb the popular uprising of March 2011 soon to become known as the Syrian Revolution (*al-thawra al-suriya*). A presidential decree granted judicial police powers to the security forces a month after the start of the uprising and prolonged preventative detention from 24 hours to 7 days (with a possible extension to 60). As a result, the security forces were enabled to legally detain anyone for prolonged periods in their detention centres which operated outside of the national prison system. As demonstrations grew, prosecutorial services swelled and criminal courts multiplied in courthouses throughout the country. Another decree in 2012 established a new court of exception in the capital: the Counterterrorism Court. Anyone who organised and participated in street demonstrations, filmed and reported on them, provided care to wounded demonstrators... any citizen who expressed the need for social, economic and political reforms was now labelled a terrorist and could stand trial in the new court (Cardinal 2021). Damascus, capital of the Asad regime, became the stronghold of the criminal justice system in Syria.

In response to the politics of repression, Syrian lawyers, prosecutors and judges, particularly in the North, mobilised collectively to petition the President against oppressive legislation and the brutal crackdown on the uprising. When the appeal for reforms failed, lawyers and the judiciary organised themselves into independent associations to challenge the regime's grip on the criminal justice system. In 2012, prosecutors and judges who resided mainly in the northern governorates of Aleppo and Idlib began to publicly resign from state office and formed independent councils and courts to administer justice in regions no longer under state control. This article focuses on the actions of the first independent judicial association: the Free Syrian Judicial Council (FSJC – *Majlis al-qada' al-suri al-hurr*).

Unlike the majority of non-state courts and councils established in Syria, the FSJC was not founded by groups of armed resistance that gradually took control of localities throughout Syria. As an independent judicial corps of former state officials, the FSJC does not belong to the category of “insurgent justice” or “rebel justice” defined as the “practice by non-state armed groups in zones of armed conflicts of establishing their own courts to administer justice” (Provost 2021, 2). Some prominent examples of the rebel administration of justice in post-2011 Syria include the Kurdish insurgent group YPG, the armed wing of the Democratic Union Party-PYD in the Northeast (Provost 2021, Ekman and Meyer 2021), Islamist groups such as the Nusra Front/Jabhat al-Nusra (Ekman 2017, Schwab 2018, Ekman and Meyer 2021), the Islamic State in Syria and Iraq-ISIS (Revkin 2016, Ekman 2017, Provost 2021), the Islamic Movement of the Freeman of the Levant/Ahrar al-Sham (Ekman 2017, Schwab 2018), the Hayat Tahrir al-Sham-HTS that set up the Syrian Salvation Government (Ekman and Meyer 2021, Pierret and Alrefaai 2021, Cook *et al.* 2023) in the Northwest, and various armed groups that jointly established the House of Justice/Dar al-qada in Dar'a and the Judicial Council in Eastern Ghouta in the South (Ekman 2017, Schwab 2018, Ekman and Meyer 2021).

The FSJC membership consisted of career judges and prosecutors who actively opposed the Syrian regime. Therefore, their composition differed significantly from other opposition councils and courts. For example, the United Judicial Council of Aleppo (UJCA – *Majlis al-qada' al-muwahhad fi halab*), the second independent council established in 2012,¹ included only three career judges; the majority of members to preside over the courts were selected among lawyers and Islamic legal scholars (al-Sharq al-Awsat 2013, Ekman 2017, 84). This change in the professional composition of the courts reflected the change in the law applied in the courts: the UJCA rejected Syrian legislation and replaced it with the Arab League's codifications of Islamic law (Baczko *et al.* 2016, Ekman 2017, Schwab 2018) as did the House of Justice in Dar'a (Ekman 2017). Other rebel courts established by Islamist groups opted for the application of Islamic law that was not codified, such as the Nusra Front and Ahrar al-Sham (Ekman 2017, Schwab 2018); the Salvation Government of Idlib also adopted Islamic law, both codified and uncodified (Ebaa News Agency 2018).² Though the PYD did not adopt Islamic law, it nonetheless replaced some Syrian laws by new legislation in a show of territorial sovereignty. A provisional constitution was introduced in 2014 and Syrian laws were often amended and applied in courts along with a combination of foreign laws (Provost 2021, 365; 370–371). To the contrary, the FSJC supported Syrian state law, a stance that set them apart. Their main goal was to use the full force of the law, both national and international, to hold the Asad regime accountable for its crimes against the Syrian people.

First, this article describes the online sources used to document the mobilisation of the legal community against the Asad regime. Second, the concept of judicial resistance is defined, and third, the article explores the emergence of the resistance movement by describing the context which led to different actions of resistance carried out by lawyers, prosecutors and judges in the North. Fourth, the article focuses on the judicial acts of resistance carried out by Syrian judges and prosecutors during the initial stages of the uprising. Finally, the article aims to demonstrate that even when prosecutors and judges resigned from office, they still engaged in a form of judicial resistance by doing their best to uphold the rule of law in regions no longer under state control. They duly investigated crimes and provided services to the population despite the breakdown of public order and the fragmentation of the non-state judicial system engendered by the armed conflict.

2. Sources

Events of the popular uprisings of 2010–2011 in the Arab world became known on a global level because citizens on the ground provided information through their use of social media and the Internet. Social media allowed people to organise their activities of protest. In the case of Syria, a well-known Facebook page “The Syrian Revolution 2011” enabled demonstrators to vote for the slogan of weekly Friday demonstrations (Baczko *et al.* 2016, 373–379). Exiled Syrians set up a Facebook page and YouTube channel called S.N.N, the *Shaam News Net*, which played a pivotal role in uploading footage of

¹ Dates vary according to researchers: October 2012 (Schwab 2018, 812), autumn of 2012 (Baczko *et al.* 2016, 146) and late 2012 (Ekman 2017, 83). The UJCA ceased operation on 18 November 2013 (Bello 2013).

² Ekman and Meyer mistakenly stated that “there is not codified law regulating either procedure or substance in the Salvation Government areas” (2021, 53), despite the fact that they mention the *Journal of Judicial Rulings* as a source of law applied in the courts. The *Journal* refers to the first codification of Islamic civil law by the Ottomans in 1869–1876: *Majallat al-ahkam al-'adiliyah*.

demonstrations sent to them by Syrians living events in real-time (Abouzeid 2018, 49–51). Satellite news channels picked up on users' content. Syrian-owned *Orient News* broadcast S.N.N. postings and other daily feeds of photos and footage in order to report on the demonstrations and the regime's crackdown on protesters. The Qatari news channel *al-Jazeera* also relied on social media postings for information since its journalists were banned by the Asad regime from reporting inside Syria (Marrouch 2014). *Al-Jazeera* and the Saudi-owned *al-Arabiya* both conducted in-depth interviews with Syrian opposition members, among them lawyers, judges and prosecutors referred to in this article. These and other international outlets such as BBC, CNN, France 24, etc. benefited from reports carried out by Syrian citizen journalists who provided an alternative narrative of events to Syrian state media. An example in point is *Enab Baladi*, a local newspaper first based in Daraya, a suburb of Damascus, that evolved into an electronic news publication when staff were forced into exile because of the destruction of their hometown by the regime forces (Badran and Smets 2021, 1382). Because of the ongoing armed conflict, the overwhelming majority of Syrian independent media outlets in favour of the opposition largely operated online and in exile (Issa 2016, 14–15). These online independent media outlets are an important source for this article and are referenced to describe the mobilisation of the legal community in their fight for reforms.

Facebook pages created by members of the legal community who opposed the regime are also an important source of information for this article. As soon as an independent association was formed, members would create a public Facebook page to freely express their opposition to the Asad regime and also make known to the public the different services and help they provided. YouTube videos were also posted by state officials who publicly resigned from office. Many judges and prosecutors resigned in the summer of 2012 and went on to establish the first independent councils and courts in the fall and winter. Because of the public nature of the information, opposition members of the legal community are explicitly cited in this article. In fact, not to identify these lawyers, judges and prosecutors who openly opposed the actions of the Asad regime and exposed themselves and their families to reprisals is a disservice. Many of them put their lives on the line to challenge the regime's brutal crackdown on peaceful demonstrators.

However, working with online sources comes with challenges. Sources can and do vanish. The author, who was a field researcher up until 2011, learnt this the hard way. On numerous occasions, the Wayback Machine (web.archive.org) enabled the retrieval of "lost documents" when websites were changed or terminated such as the oppositional webzine *All4Syria*. *Orient News Net*, an important oppositional news source, ceased to exist on 21 November 2023, but their online content is still available. There are some online sources referenced in this article that are no longer retrievable even through the Wayback Machine. The author did preserve some hard copies of the texts and images posted by Syrian legal professionals on Facebook accounts, but many postings are simply irretrievable after those accounts were closed. As the years passed, Facebook posts that remain, such as those of the original account of the FSJC (*mglaskudat*), were often edited or even deleted; in their present form, they do not necessarily represent the original content. Therefore, any attempt to reconstruct events as they unfolded based on Facebook posts must be undertaken with caution. In addition, information posted must be verified: the intention to do something does not always give rise to concrete action. For example, it was announced online that an appeal court was to be established by

oppositional judges and prosecutors in Jisr al-Shaghur (Idlib) in June 2013. However, a former member of the FSJC, interviewed in the summer of 2022, confirmed that the court was never established. The author recently started to interview members of the legal community who opposed the Asad regime in order to verify information obtained online. This final phase of the research is ongoing.

3. Judicial resistance

Two typologies of resistance proposed by sociologists Jocelyn A. Hollander and Rachel L. Einwohner (2004) and law professor Hans Petter Graver (2018) are referenced in this article. The advantage of combining these two typologies is that the first conceives of resistance in general terms, and the second focuses on resistance as a judicial action. There are common core elements to both typologies, but the typology of Graver is of immediate interest to the topic of this article since it aims to qualify what makes an act of resistance a judicial act.

As observed by Hollander and Einwohner, there is a consensus with regards to a minimal definition of resistance: “resistance involves oppositional action of some kind”. However, there is disagreement among scholars regarding “whether resistance must be intended by actors and whether it must be recognised by targets and/or observers” (Hollander and Einwohner 2004, 544). The typology elaborated by Hollander and Einwohner, which schematises the issues of intent and recognition as experienced by the three distinct groups of the actors of resistance, the targets and observers of resistance, was helpful to examine the movement of judicial resistance in Syria.

3.1. *Overt and covert resistance: the challenge of documenting judicial resistance*

The common core elements to both Hollander-Einwohner’s and Graver’s typologies are the two types of resistance characterised as being overt or covert. Hollander and Einwohner (2004, 545) define overt resistance as “behavior that is visible and readily recognized by both targets and observers as resistance”. For example, at the beginning of the popular uprising in 2011, many prosecutors of the regular courts wanted to investigate the deaths of demonstrators and other suspicious deaths, but were prevented from doing so by the security forces. Later on, senior judges were tenacious in their decision-making to defy oppressive legislation and rule in favour of the defendants despite the fact of being pressured to impose harsher punishments.

For the most part, if members of the judiciary were to be successful in their attempts to temper oppressive laws imposed by the Syrian regime and deliver some form of justice to the population, they had to operate in a covert manner and hide their actions of resistance from state authorities and the security forces. These tactics correspond to Hollander’s and Einwohner’s qualification of covert resistance (2004, 545): “acts that are intentional yet go unnoticed (and, therefore, unpunished) by their targets, although they are recognized as resistance by other, culturally aware observers”. Covert acts of judicial resistance became known to the researcher when members of the Syrian judiciary related their experiences online after resigning from office. For example, they depended on their contacts with the police and fellow judges to eventually secure the release of demonstrators. Thus, their covert acts of resistance were recognised by other members of the criminal justice system, for example the judicial police, fellow judicial officers and

staff who worked in the courts. In addition, other observers such as lawyers who collaborated with members of the judiciary to undermine the repressive laws of the State and defendants who benefited from decisions made by judicial officers to release them or alleviate harsh punishments were able to reveal the actions of these judges and prosecutors to journalists, human rights organisations or international NGOs and commissions mandated to investigate and document crimes against humanity and war crimes committed in Syria.

3.2. Graver's typology of judicial resistance

In addition to describing judicial acts of resistance as overt and covert, Hans Petter Graver also qualifies them as acts of resistance specific to judges and prosecutors who fulfil the duties assigned to them while in office (Graver 2018, 850, 864). For example, when some Syrian judges and prosecutors decided to publish online videos of their resignation from office, such an action was not a judicial act but a political act of protest against the Syrian regime. Therefore, a judicial act is a decision and a ruling made by judges and prosecutors in their capacity as judicial officers. Some scholars have used the term "on-bench resistance" to refer to decisions made by judges in office while decisions and actions of a political nature initiated by members of the judiciary are labelled "off-bench resistance" (Trochev and Ellett 2014).

Graver points out that a judge has many loyalties, but as a judicial officer his or her first loyalty is to the law. However, as he observes, resistance to oppressive laws can be considered a moral obligation for the judge (Graver 2018, 853). Many legal scholars have argued that "unjust laws cannot constitute valid law" or that a judge "has a moral right or moral duty to disregard highly unjust laws" (Graver 2018, 850). Based on this reasoning and on his analysis of judicial acts of resistance on the part of German members of the judiciary during the Nazi regime, Graver introduces two additional categories to qualify judicial acts of resistance: in addition to being overt or covert, judicial acts of resistance are either legal, within the bounds of the law, or illegal, in breach of the law (Graver 2018, 865). The category of legality enables the researcher to assess the degree to which members of the judiciary violated their oath of office while committing acts of judicial resistance. It can also be used as a gauge to assess the oppressiveness of a legal system – though this is not the aim of this article. If judges and prosecutors are obliged to constantly breach the law in order to make decisions in a just manner, then one could conclude that indeed legislation is oppressive and discriminatory. The Syrian judges and prosecutors who publicly resigned from office did so because they opposed the repressive legislation introduced by the regime to crush the popular uprising in 2011–2012. They also objected to the security forces' interference in the administration of justice. In fact, certain judicial functions were delegated to the security forces thus preventing judges and prosecutors from exercising their duties (more to follow). Also, the oppositional judges and prosecutors rejected the very legality of the regime, and therefore did not consider their dissent as a form of treason or a criminal act against the security of the State.

As observed by Graver (2018) and other scholars, it is rare that members of the judiciary collectively oppose the unjust laws of authoritarian regimes. It is even rarer that they resign in protest of authoritarian rule. The Syrian judiciary is no exception. According to online documentation and estimates provided by judges and prosecutors who resigned,

only about 100 members of the judiciary publicly announced their resignation in protest of the regime's crackdown of the popular uprising (Enab Baladi 2015). This is a small group of individuals in comparison to the total number of the Syrian judiciary, which at the time was about 1,700 members (Hamiju 2016). And it is this group of dissident judges and prosecutors who then publicly shared their stories of resistance, some of them successful and others not. However, one cannot assume that because judges and prosecutors did not resign from office that they fully support the regime of Bashar al-Asad. Most members of the judiciary who are civil servants depend solely on their salaries for their subsistence, and without this employment, many would not be able to provide for themselves and their families. Another reason for not resigning in a public fashion is the regime's well-known practice of retaliating against individuals and members of their families who openly oppose it. The silent majority of the Syrian judiciary does not translate as support for the regime of Bashar al-Asad as repeatedly stated by members of the judiciary who did openly resign. And it is possible that in the future we will learn of many more acts of resistance or attempted acts of resistance on the part of the silent majority.

Though Graver's discussion of judicial resistance refers to acts of opposition that judges and prosecutors perform in their capacity as judicial officers, this article focuses on judicial acts of resistance carried out by Syrian judges and prosecutors before and after their resignation. In the discussion of the Syrian judicial movement of resistance since 2011, it will transpire that acts of resistance carried out by judges and prosecutors who were no longer members of the state judiciary can nonetheless be qualified as judicial acts of resistance. Members of the FSJC continued to uphold Syrian laws in regions that fell within their former jurisdictions but that were no longer under state control. Note should be taken that the mobilisation of lawyers, who were the first members of the legal community to openly demonstrate against the Asad regime, contributed to judicial officers joining the resistance. It is the collective action of the legal community in Aleppo that drove the judicial resistance movement.

4. The context: lawyers and judges mobilise to resist Asad's politics of oppression

4.1. Aleppo and its courthouse: the hub of resistance

As the popular uprising spread like wildfire throughout the country, so did the campaign of mass arrests and detentions carried out by the police and the security forces. However, there were regions in the country that were less secured by the regime, notably the governorate of Aleppo where the ratio of police to inhabitants was inferior to other regions. And this lack of police presence was even more prominent in certain neighborhoods of the city of Aleppo, notably Salaheddin and al-Sukkari. Many demonstrations originated in these neighborhoods and others on the east side of city, which eventually became the stronghold of armed oppositional groups in the summer of July 2012 (Baczko *et al.* 2016, 63, 86–87). The courthouse of Aleppo was located on the east side of the city.

4.2. *Aleppo's Call to the Nation*

The courthouse of Aleppo became the hub of resistance not only because it was located in the “revolutionary quarters” of the city, but also because members of the legal complex – the bar, the bench and academia (Karpik and Halliday 2011) – took a stance early on to challenge the crackdown on the popular uprising. *Aleppo's Call to the Nation* was a 11-point letter addressed to President al-Asad on 4 April 2011 demanding political and legal reforms and signed by 28 prominent professionals, seven of whom were members of the legal elite of the city: Professor Mahmud Murashshaha, former dean of the Faculty of Law of Aleppo University, Muhammad Mugharaba, chief executive judge of civil court decisions at the Aleppo Courthouse, Professor Bilal Safi al-Din, former dean of the Faculty of Islamic Law of Aleppo University, lawyers Najib Damdam, Mahmud al-Hamam, Anwar Abd al-Jabbar al-Isa and Muhammad Amin Abd al-Latif, lawyers and members of the Aleppo branch of the Bar Association (Badenjki 2022). These signatories asked for the end of the state of emergency and martial law, which had been in effect since 1963, as well as the abolition of exceptional courts and the revision of laws to better guarantee the independence of the judiciary, freedoms and rights of citizens, a multi-party system of government and independent elections.

The Asad regime seemed to comply with this popular demand when a series of four Presidential Decrees issued on 21 April ended the state of emergency and abolished the Supreme State Security Court³ which had prosecuted political opponents for more than four decades. Two of the decrees ultimately aimed at containing the spread of the demonstrations. Legislative Decree No. 54 allowed for public demonstrations (prohibited by Art. 335 of the Syrian Criminal Code of 1949), and stipulated procedures to be followed to obtain permission from the Ministry of Interior – though it later transpired that administrative delays resulted in people not obtaining permissions or being arrested by the security forces before they could demonstrate. In addition, Legislative Decree No. 55 enabled the Syrian regime to provide a veneer of legality to the arbitrary arrests and detentions of demonstrators carried out by the security forces. This amendment to Article 17 of the Syrian Criminal Code of Procedure (CCP) of 1950 enabled the powers of the judicial police to be delegated to other individuals, i.e. to members of the security apparatus and special forces. These individuals were now legally empowered to arrest, investigate and interrogate people who allegedly committed crimes related to national security and public peace as stipulated in the Criminal Code, Articles 260–339. The amendment to Article 17 of the Syrian CCP also prolonged the period of preventative detention from 24 hours (as stated in Article 273) to 7 days with a possibility of extension to up to 60 days, despite the fact that the majority of individuals held in the detention centres of the four branches of the security apparatus (Military Intelligence, Air Force Intelligence, Political Security Directorate and General Security Directorate) were often detained for longer periods without appearing before a judge (Independent International Commission of Inquiry on the Syrian Arab Republic 2016). And an important number of these individuals were tried in courts of exception which do not apply regular criminal procedure. It would appear that the regime did not

³ Respectively Legislative Decrees No. 161 and No. 53 of 21 April 2011.

fully “trust” the regular courts and prosecutorial services to comply with their politics of repression and convict as many people as possible in the shortest amount of time.

4.3. *The emergence of the Free Lawyers’ Association of Aleppo*

As the violence escalated and the regime’s efforts to crush the uprising intensified, 104 lawyers of the Aleppo Branch of the Bar Association signed a 10-point letter addressed to President al-Asad on 15 May 2011 requesting the immediate cessation of violence against civilians, the end to arbitrary arrests, the lifting of sieges in towns and villages and the return of the army to its barracks. They demanded that families should receive compensation for their members who were killed and that those deaths should be properly investigated by a judicial commission. These Aleppan lawyers petitioned for the release of demonstrators and a presidential pardon for all political prisoners. They also requested a restructuring of the security apparatus and a reduction of its powers in addition to the reorganisation of the judicial system in order to ensure the independence of the courts and the judicial review of all state actions. Finally, the Association called for a national dialogue to be headed by the President in order to initiate political, legal and economic reforms and restore peace to the country (Al-Maktab al-tanfidhi li-muhami halab al-ahrar 2012).

The requests fell on deaf ears. However, these lawyers and many others did not abandon their calls for reforms and the release of arbitrarily arrested detainees. In the months to follow, they staged about thirty demonstrations and sit-ins in the Aleppo courthouse.⁴ On the first anniversary of the Revolution, close to 500 lawyers demonstrated at the Aleppo courthouse only to be dispersed by security forces (Al-Jazeera 2012). Demonstrations intensified during the months of May and June 2012. By then, these lawyers had organised themselves into the Free Lawyers’ Association of Aleppo (*mahamu halab al-ahrar*), and other Free Lawyers’ Associations sprung up throughout Syria. The founding of the Association was an act of resistance to the Asad regime’s tight grip on the legal profession.

4.4. *The Judges’ Club of Syria*

Legal protests reached a new momentum when judges and prosecutors publicly expressed their demands for judicial reforms and denounced the abuses of the Syrian regime. One hundred and forty-five judges and public prosecutors throughout Syria joined forces and, on 4 July 2012, for the first time in the history of modern Syria, formed an independent association, the *Judges’ Club of Syria (nadi qudat suriya)*. Their aim was to defend their interests and initiate institutional reforms in order to better serve the public and restore confidence in the justice system. A majority of these activists, 125, were from Aleppo, a number which represented about half of the judges and prosecutors appointed to this jurisdiction at the time.⁵ Forty-two of them met at the Bar Association in the city to adopt the charter of the new organisation and to elect members to the provisional

⁴ Smartphone videos of courthouse demonstrations were published on a variety of YouTube channels, notably *freedomaleppo*, *Shaam Network S.N.N* and *Ugarit News*.

⁵ In December 2008, there were 218 judges and prosecutors appointed to the governorate of Aleppo. Source: Statistics Bureau, Ministry of Justice, 20 May 2009.

board. 11 candidates ran and 7 were elected. Judge Muhammad Mugharaba, a signatory to *Aleppo's Call to the Nation*, was appointed president of the board (Kanjo 2012).

The judges and prosecutors who founded the *Judges' Club of Syria* wanted to reform the system from within. The new association was modeled on the Egyptian Judges' Club, founded in 1939. Officially, the Egyptian association is a social club, but is known for its activism in upholding the independence of the judiciary and criticising the executive for its disregard of the rule of law (Said 2008). As for the Syrian Judges' Club, its members demanded reforms, thus challenging the executive's tight control of the judiciary. The goals of the association were clearly expressed in Article 5 of its founding statutes (Nadi qudat suriya 2012):

- Goal 1: secure the independence, impartiality and immunity of the judiciary;
- Goal 2: strengthen cooperation and solidarity among its members;
- Goal 3: offer professional development sessions;
- Goal 4: organise activities of a social nature;
- Goal 5: employ the necessary means to meet the needs and defend the interests of its members;
- Goal 6: create a website for the association and publish a newsletter and journal;
- Goal 7: organise conferences and lectures in and outside of Syria.

These were bold demands since the judiciary in Syria is, by law, denied freedom of expression; none of its members can publish or give an interview without prior permission from the Minister of Justice (Judicial Authority Act No. 98/1961, Art. 81). An interview with a former member of the Judges' Club⁶ revealed that much effort went into the establishment of the association. In the summer of 2011, a Syrian judge travelled to Cairo, Egypt to meet with members of the Egyptian Judges' Club in order to acquire a copy of its statutes and better understand the functioning of the club. Over the next year, Syrian judges and prosecutors secretly started networking to recruit as many members as possible and establish its founding order. The creation of the Club was announced two days after the Counterterrorism Law No. 19 came into effect on 2 July 2012, and thus was meant as a clear message to the regime that members of the judiciary would not remain silent regarding the instrumentalisation of the judicial system, its courts and personnel to prosecute and punish people's participation in the uprising. In retaliation, the High Judicial Council, responsible for the judicial appointments process, dismissed the president of the Judges' Club, Judge Muhammad Mugharaba. Stripped of his judicial immunity, Judge Mugharaba became easy prey for the security forces. He immediately went into hiding, left Syria and sought refuge in Europe.⁷ All of the judges and prosecutors who publicly adhered to the Syrian Judges' Club were forced by the security forces to disband. The public mobilisation of the judiciary reached a heightened level with the first resignations of its members from office in the summer of 2012.

⁶ Interview, Gaziantep, Turkey, 6 August 2022.

⁷ *Ibid.*

5. Judicial acts of resistance while in office: investigating suspicious deaths and dismissing cases against demonstrators

The first member of the Syrian judiciary to publicly resign from office was Talal Hushan. On 25 of June 2012, he published a video on YouTube explaining the reasons for his resignation (reposted by Tajammu' Shabab Mawrak al-Ahrar 2012b).⁸ As prosecutor of Mhardeh (a village in the governorate of Hama), he was in charge of investigating a massacre that occurred on 5 June in a village to the south, al-Qubeir. Based on forensic evidence and eyewitness accounts, Hushan confirmed that the killings were conducted by members of the Syrian army and pro-regime militias, and not by "terrorists" as stated in the official report and Syrian state media. In his video Hushan called upon his fellow prosecutors and judges to denounce crimes committed by the regime, so that the judiciary would not be remembered for its collaboration and complacency with the regime.

Soon other members of the judiciary would start to resign and join Hushan in their public denunciation of the regime. In an interview broadcast of the Qatari news channel *al-Jazeera*, reposted on 29 December 2012 (Mglas kudat 2012b), a group of four judges and prosecutors who resigned from office spoke of their efforts to help demonstrators who were arbitrarily arrested and detained by the regime's security forces before their resignation. Muhammad al-Sayir, a prosecutor appointed to the regional court of al-Bab, a city located 36 kilometers northeast of Aleppo, spoke of how the security forces prevented him from carrying out an investigation into the deaths of three persons who participated in a demonstration that spontaneously erupted after Friday prayer at the main mosque in March or April 2011. He stated that the security forces had fired on the demonstrators to disperse them causing the death of three. During the funeral, the security forces came back and fired on the procession and killed three more people. Prosecutor al-Sayir wanted to conduct a proper investigation into the deaths of these individuals, but the security forces prevented him from doing so.

Khalid Shihab al-Din was a regional court judge in al-Zarba, a district administered by the Aleppo courthouse before he resigned on 23 July 2012 (Ugarit News – Syria 2012a). He was the second member of the judiciary to publicly resign. During the interview, he spoke of a network of judges, prosecutors and investigating judges who collaborated with each other to dismiss cases against demonstrators and how he intervened on a number of occasions to help out members of his extended family. About a month before his resignation, his cousin Abdallah Shihab al-Din was arrested with 29 other persons who were demonstrating in the old city of Aleppo, in the neighbourhood of Sayf al-Dawla. They were detained in al-Ansari police station. Judge Shihab al-Din contacted a friend at the station to inquire about the arrest of his cousin, but was informed that since all of the demonstrators were registered in the same case file, it would be impossible to single out his cousin. He then contacted fellow judges at the Aleppo courthouse, among them, Amir al-Bakri, a former investigating judge and one of the four interviewees, to take charge of the investigation of his cousin's case. After two days in custody, all of the

⁸ Prosecutor Hushan's resignation video with English subtitles was reposted by Syrian Scenes (2012). The Independent International Commission of Inquiry on the Syrian Arab Republic also mentioned in a report Hushan's video and condemnation of the falsified report regarding the Qubeir massacre. See Independent International Commission of Inquiry on the Syrian Arab Republic 2012.

demonstrators were released after charges against them were dismissed (a decision called *tark* in Arabic). However, when authorities got wind that Judge Shihab al-Din was helping out demonstrators, he realised that he could no longer play a role in countering the oppressive measures of the regime and preventing people's detainment. That's when he decided to resign.

During the interview, Amir al-Bakri explained how he received demonstrators in his office to investigate charges against them. He described how he treated them with the utmost respect, served them coffee and paid attention to their needs. Many of them described how they had been tortured while in custody and he ordered that a medical examiner assess their injuries and that the medical report be introduced as evidence into the case file. According to the Syrian CCP, confessions obtained under duress are to be excluded as evidence, and it would appear that Judge al-Bakri aimed to have the confessions dismissed as evidence.

Talal Hushan, prosecutor at the regional court of Mhardeh as earlier mentioned, stated during the interview that he systematically released demonstrators that were brought to his office and never laid charges against them. But these judges' and prosecutors' support for the revolution came at a cost. Talal Hushan stated that his house was burnt down by state authorities and Khalid Shihab al-Din mentioned that at one point, his brother was detained by the Air force security branch in Aleppo to put pressure on him. Amir al-Bakri said that he was very cautious about where he parked his car, and constantly would change his route to work in case of an assassination attempt. As it transpired in the al-Jazeera interview, judges and prosecutors established networks of collaboration among themselves and even local police forces to work towards releasing as many demonstrators as possible. In the regional courts, it would appear that judicial officers were in constant contact with civilians who opposed the regime, and seemed to have more leeway to act independently. Nonetheless, when it came to their ability to defy the security forces, they were basically unable to do so and fell victim to or lived in fear of reprisals. Because of this constant threat, they had to go into hiding and eventually leave Syria.

5.1. Trial judges opposing oppressive legislation

In response to the on-going demonstrations, new legislation at the beginning of 2012 imposed heavier fines on demonstrators. Presidential Decree No. 9 passed on 11 January 2012 increased the fine imposed on illegal demonstrators: instead of the former 500 Syrian pounds (SP) stipulated in Art. 335 of the Syrian Criminal Code, which at the time was about 10 US dollars, now the fine imposed ranged from 20 000 to 50 000 SP, that is to say between 375 to 930 US dollars. People who participated in "riot gatherings", described in Art. 336 of the Syrian Criminal Code as a procession or a crowd that illegally obstructs a public road, were now punished by a fine of 50 000 to 100 000 SP. These fines were extremely high, and constituted a financial burden on families since a large number of demonstrators were students. The more arrests the Syrian regime made, the more money it could make off of the tens of thousands of people who took to the streets to demonstrate.

An article published by *All4Syria* reported on the judgements issued by the First Criminal Court of Appeal of Aleppo presided by Judge Mahmud al-Babi (*All4Syria*

2012), one of the founding members of the *Judges' Club of Syria* and elected representatives of its executive board. His court was described as the "last recourse" for demonstrators who were refused release on bail by investigating judges and first instance criminal courts. Judge al-Babi was known for his "integrity, honesty and manly courage", and despite the enormous pressure exerted by the security forces on judicial officers to convict and sentence the greatest number of demonstrators as possible, this judge was defiant in his pursuit of justice. The article related that Judge al-Babi would consistently divide the fine of 20,000 SP among the co-defendants of a case. For example, the 20 co-defendants registered in the same case file would pay 1,000 SP instead of 20,000 SP each. Then lawyers of the Free Lawyers Association of Aleppo would make the rounds in the courthouse to collect money to pay for the fines since most of the demonstrators were students⁹ and did not have the financial means to pay the penalties. The *All4Syria* report stated that the judge was summoned on more than one occasion and asked to retract his decisions. However, he refused to do so, and insisted that in his capacity as a judge and president of the court, he had the authority and discretion to decide that 1000 SP was a sufficient fine to be paid by each defendant. His reputation of standing up to the regime was well-known and perhaps his defiance played a role in his eventual death on 4 December 2012. Judge al-Babi was in the company of three close friends and associates (two of whom also died) at La Rose Café of the Pullman Hotel in a well-secured neighbourhood of Aleppo, controlled by the regime, when they were the target of a gun attack (Enab Baladi 2012). It is still unclear whether Judge al-Babi was the actual target of the attack.¹⁰

6. Judicial acts of resistance after resignation: The Free Syrian Judicial Council

Within weeks of the founding of the *Judges' Club of Syria* and its disbandment, members of the judiciary started to post videos on YouTube announcing their resignation from the state. As stated previously, Khalid Shihab al-Din a regional court judge in the jurisdiction of Aleppo resigned on 23 July 2012. Shortly after, Anwar Majanni, a founding member of the *Judges' Club* and member of its board, announced his resignation on 4 August 2012 (Ugarit News – Syria 2012b). He was a regional court judge in Jindires and Rajo, northwest of Aleppo. In his resignation video, Judge Majanni criticised the interference of the security forces and the executive in the administration of justice and the regime's collaboration with the PKK (Kurdistan Workers' Party) to crush the popular uprising in the region of Afrin. The following day, he was interviewed by the satellite news channel al-Jazeera (reposted by Freedomfornewsyria Forall 2012), and was asked to explain why he defected from the regime. He stated he was a judge in the countryside region of Afrin when the Syrian Army let members of the PKK overtake the region, take charge of all government buildings including the courthouse and the court he was working in. He said the PKK was largely responsible for suppressing the street demonstrations of fellow Kurds.

Prosecutor Hushan, Judges Shihab al-Din and Majanni joined ranks and founded on 9 September 2012 an association of independent judges called the Free Syrian Judicial

⁹ See Syria TV's programme "Photo Story" (*hikayat sura*), Episode 6, "The University of the Revolution" (*jami'at al-thawra*), 18 May 2021 to learn more about student demonstrations in Aleppo (Syria TV 2021).

¹⁰ Interview, Gaziantep, Turkey, 6 August 2022.

Council. The name of the association was patterned after the organisation founded by lawyers who opposed the regime, the Free Lawyers' Association of Aleppo. They soon set up office in the Turkish City of Reyhanlı, just over the border from Harem, Syria.

The Free Syrian Judicial Council created a Facebook page (12 October 2012) and a YouTube channel (11 December 2012) in order to publicise their activities. On their YouTube channel, they reposted the resignation videos of 26 judges and prosecutors. The resignation of a group of 9 members of the judiciary from the governorate of Idlib on 9 December 2012 was the most important collective resignation of the judiciary (Mglas kudat 2012a). By the end of the year, it was posted on the Council's Facebook page that 57 judges and prosecutors had joined the organisation.

6.1. Faithful servants of the State but opponents to the regime

How can one speak of the judicial acts of resistance of a judge or a prosecutor who resigned from office? How can they make judicial decisions if they no longer have the authority to do so? For members of the Free Syrian Judicial Council, the Syrian regime is illegitimate because of its use of brute force to remain in power and its systematic violation of the human rights of its citizens. On a number of occasions, these judges and prosecutors repeated that they had resigned from the regime and not from the State. They believed themselves to be the faithful servants of the State and defenders of its laws by opposing the authoritarian regime of Bashar al-Asad. During an interview, Judge Shihab al-Din stated that he derived his authority from the legitimacy of the Syrian Revolution of March 2011 (Aljazeera Mubasher 2012). So based on this reasoning, what were the first judicial acts carried out by the Council?

6.2. The arrest warrant for the President of the Syrian Arab Republic

The first judicial acts were a series of individual arrest warrants for Bashar al-Asad and 63 other individuals, among them, intelligence officers, the Minister of Defense, army staff, generals and commanders who all planned, ordered or individually participated in the detainment, torture or death of civilians, street demonstrators, and soldiers who did not want to obey orders to use deadly force against demonstrators. Some influential businessmen who financed militias and the purchase of weapons used against civilians were also subjects of the arrest warrants. Many officials and businessmen named in the arrest warrants appear on lists of financial sanctions imposed on Syrian nationals issued by the US and Canadian governments, the European Union and the UK. The arrest warrants were issued in the name of the Syrian Arab Republic and the Free Syrian Judicial Council on 23 October 2012, signed by Khalid Shihab al-Din acting as an investigating judge. The arrest warrants were modelled on regular arrest warrants issued in Syria. A copy of the decision for the arrests was posted on the Council's Facebook page (12 November 2012). The plaintiffs were the Free Lawyers' Association and three lawyers who represented the Local Revolutionary Councils of Hauran, in the south, regarding events that occurred in Dar'a where the uprising started. Bashar al-Asad and 63 other individuals were accused of crimes defined in the Syrian Criminal Code, the Economic Crimes Act and the Antiquities Act: premeditated murder, incitement to commit mass murder, murder in preparation of a felony, rape, theft with bodily harm, the organisation of criminal gangs and armed gangs, the instigation of civil war and sectarian conflict; acts of terrorism; unlawful detainment and torture; sexual

violence and kidnapping; arson; the embezzlement of public funds; the damage, destruction and theft of antiquities. After reviewing the charges filed by the public prosecutor of the FSJC and the documents of the case, investigating judge Shihab al-Din decided to issue warrants for their arrest and detainment in addition to the freezing of their personal and family's assets; the plaintiffs were also asked to bring forward their witnesses. A video of the arrest warrant for Bashar al-Asad was posted on the Facebook page of the Council on 25 October 2012 which coincided with the yearly celebration of Id al-Adha, and was meant as a gift of the Syrian Revolution to its people.¹¹

Even more publicity was given to the arrest warrants when Khalid Shihab al-Din as general secretary and investigating judge of the Council and lawyer Rami al-Hamidu, public relations officer of the Free Lawyers' Association and spokesman for the plaintiffs, agreed to an in-depth interview with the well-respected journalist of al-Jazeera, Zayn al-Abdin Tawfiq (Aljazeera Mubasher 2012). The al-Jazeera news channel played an active role in reporting on the March Revolution of 2011 and showcasing the opinions and actions of the Syrian opposition. Because of the Al-Jazeera interview, the FSJC gained greater visibility.

The interview took place in al-Reyhanlı on 26 October 2012. In his introduction, journalist Tawfiq stated that his guests were waging a "legal battle" (*ma'raka qanuniya*) against the regime in their efforts to support the Syrian Revolution. During the interview, the journalist seemed to take a rather critical stance and questioned the very legitimacy of the arrest warrants. He also asked if any arrests had been made and who would make the arrests. Judge Shihab al-Din responded that the arrest warrants had been issued only three days prior and that the Council was collaborating with the leadership of the military revolutionary councils, the Free Syrian Army and local police forces, and that the intention was to set up a judicial police in each area that was no longer under state control. The journalist concluded that the Council was really only in the preliminary stages of investigation and that practically nothing had been accomplished as of yet. He then questioned Rami al-Hamidu on the kind of proof they had against the accused, and if it would be substantial enough to stand up in court and secure a conviction. Al-Hamidu was insistent that there was an abundance of proof: eyewitness testimony, videos of the crimes being committed, official documents establishing the line of command for orders given to kill demonstrators, to detain and torture them, etc. The journalist also asked about the laws to be applied, commenting that there should be new laws linked to the revolution. Both of the interviewees reacted strongly to the comment and said that the Syrian Criminal Code and Code of Criminal Procedure were excellent laws, similar to those applied in Lebanon and Egypt, and based on French criminal law. Judge Shihad al-Din insisted that the problem was not the quality of the Syrian legal system and its laws, but rather the Syrian regime's total disregard for the rule of law.

6.3. The documentation of crimes and more arrest warrants

On 12 November 2012, shortly after the publishing of the arrest warrants, the FSJC posted on their Facebook page a form that could serve to report on crimes against humanity and war crimes. Personal information of the victim was to be provided in

¹¹ A video of the arrest warrant was reposted by Tajammu' Shabab Mawrak al-Ahrar 2012a.

addition to the factual summary of the incident/s and the possible identity of the perpetrator/s. Evidence to substantiate the claim and any other pertinent information were to be included. The contact details of the victim were recorded for future communication. Finally, the Council obtained the informed consent of the victim (or his/her representative) to forward the report to international and regional human rights organisations and international commissions of inquiry on Syria. The Council's long-term goal was to fully document human rights violations and international crimes committed since the beginning of the popular uprising. Their continued efforts to document crimes led to more arrest warrants. For example, on 22 November 2012, the Council posted the decision of investigating Judge Khalid Shihab al-Din to issue warrants for the arrest of thirty-eight pilots who had bombarded different regions of Syria. The video of Judge Shihab al-Din reading out the accusations against the pilots, their rank, names, and the regions they bombarded was also posted on the Council's Facebook page (and reposted on their YouTube channel). By far the most impressive judicial act to be issued by the Council was the decision for the arrest of 471 pilots who bombarded towns and villages across Syria, filed by investigating Judge Shihab al-Din on 17 March 2013. The pilots were accused of deliberately committing murder, acts of terrorism, arson, the damage and destruction of historic monuments (crimes defined by the Syrian Criminal Code and Antiquities Act of 1999).

6.4. The creation of the Harem court

The Council published a very brief announcement on its Facebook page (12 November 2012) that it intended to set up a court in Harem, just over the border from Reyhanlı, Turkey. At the time, the Free Syrian Army and affiliated revolutionary military councils were fighting the Syrian Army and regime militiamen to liberate the northwest part of the governorate of Idlib, which they did by the end of December. As stated earlier, the Free Syrian Judicial Council had set up its offices in the Turkish city of Reyhanlı, and was financially supported by the charitable organisation, Orient for Human Relief, founded by the prominent Syrian businessman and philanthropist based in the UAE, Ghassan Aboud (Dowaidari 2013), owner of Orient News Net. For a full year, the Council received close to 500,000 US dollars in funding (Orient Net 2014). It was after the group resignation of 9 judges and prosecutors of the Idlib courthouse that official appointments were made to the new court on 12 December 2012 with Judge Amir Bitar, one of the senior judges, being appointed as the chief attorney general of the governorate of Idlib. A Facebook post of the Council on 1 January 2013 is accompanied by a picture of Judge Shihab al-Din sitting at a desk in front of a laptop with a court clerk to his left taking down the statement of a man with his back to the camera. Placed on the desk is a copy of the Quran used for taking the oath to tell the truth. In the background, hanging on the wall, in place of the usual portrait of President al-Asad, is the three-starred Syrian flag of Independence in green, white and black, adopted by the Syrian opposition with "God is great" written across it. The posting describes the activities of the court as follows:

In the name of God, the Lord of Mercy, the Giver of Mercy¹²

¹² Translation of M.A.S. Abdel Haleem, *The Qur'an* (2004).

Investigating judges of the Free Syrian Judicial Council initiate a criminal prosecution of pro-regime militiamen and other accused in the court of Harem established by the Council. Today, 55 warrants for the arrest of militiamen were issued and 13 accusations against other individuals were dismissed for lack of evidence. The testimonies of dozens of witnesses and plaintiffs were recorded. The investigations continue. (Majlis al-qada' al-suri al-hurr 2013a)

A Facebook post of the Council dated 15 February 2013 announced the establishment of a judicial police service by the Council in collaboration with police officers who resigned from the state police service. A subsequent post on 28 February 2013 described the field investigation of a mass grave discovered in the Tarma neighbourhood of Harem. The grave contained the bodies of soldiers executed under the command of colonel Nizar Kasir Sulayman because they refused to fire on a crowd of protestors (Majlis al-qada' al-suri al-hurr 2013b). The investigative team was composed of judges Talal Hushan, Khalid Shihab al-Din and prosecutor Muhammad Nur Humaydi of the Harem court (a prosecutor from Idlib who had resigned on 9 December 2012).

6.5. The continued efforts to sustain the Harem court

Videos posted online in the summer of 2013 showed the everyday workings of the Harem court. A report published by the Syrian opposition online news channel Shaam News Network S.N.N., filmed the Harem courthouse: its entrance with the official black and white sign of the Syrian Arab Republic, Minister of Justice, Regional Court of Harem renamed by a white banner which read Syrian Arab Republic, Free and Independent Syrian Judicial Council¹³, Courthouse in the region of Harem. A tour showed the offices, courtrooms, and personnel in addition to the out-of-court inspections carried out by prosecutor Muhammad Nur Humaydi which aimed to document damages inflicted by the Syrian Airforce, army and militias to people's property in the hope that eventually they would receive some form of compensation for their losses in a post-Asad era (ShaamNews SNN 2013). Other footage filmed by a citizen journalist of Maarat Misrin (southeast of Harem) captured the inside workings of the courthouse and Judge Amir Bitar conducting a regular inspection of the courthouse and detention centre in his function as chief attorney general (Ra'id Maarat Misrin 2013b). During the prison visit (Ra'id Maarat Misrin 2013a), Judge Bitar with his judicial commission inspected each section of the prison to establish which repairs needed to be done (electrical, water supply, paint, furniture, etc.) in order to improve on the living and working conditions of the prisoners and personnel. In his conversation with the prison "warden" dressed in camouflage, Bitar insisted that prisoners deserved to live in humane conditions during their incarceration, and that it was the intention of the Council to improve on the state prison facility. Whether changes were made remains unknown to the author.

It later transpired that the Council had difficulty in assuring the operation of the Harem prison and the proper upkeep of prisoners accused of collaborating with the regime. Despite the positive rapport that the Council had with the local armed group, Idlib's Martyrs' Brigade, the group commander informed Talal Hushan that his brigade could no longer provide the material support for the prison and prisoners. Hushan contacted

¹³ The Council changed its name to the Free and Independent Syrian Judicial Council in May 2013. See also Al-Aan TV 2013.

the Syrian Interim government of the political authority that represented the Syrian opposition, the National Coalition of Syrian Revolutionary and Opposition Forces, located in Gaziantep (Turkey), and requested that aid be provided to the brigade so they could continue to maintain the prison, but neither the Council nor the brigade received the necessary support. As a result, the nine prisoners were released and, within 24 hours, all of them were killed; the Council was never able to establish who perpetrated the killings. Hushan contacted the Syrian National Coalition and blamed them for the death of the prisoners: "Those who were killed after their release, their blood is on your hands" (Qal'aji 2015).

With the intensification of the armed conflict and the increasing number of Islamist groups, large parts of Idlib came under the control of the Nusra Front, including the Harem court in July 2014 (Al-Jazeera 2014). Eventually Hayat Tahrir al-Sham emerged out of a coalition of Islamist groups and took control of Idlib and regions west of Aleppo previously controlled by the Free Syrian Army and its allies in 2016. In November 2017, Hayat Tahrir al-Sham set up the Syrian Salvation Government along with a new court system. Islamic legal scholars rather than former state judges and prosecutors were appointed to these courts and they based their decisions on Islamic law. As for the courts set up in the regions of northern Syria now under Turkish military control, there are 73 former Syrian state judges and prosecutors who work in these courts, located in three jurisdictions: Afrin, Azaz (the new capital of the Syrian Interim Government), and Tell Abyad. The laws applied are Syrian legislation, but the appointments to these courts are decided by Turkish authorities and not by the Syrian Interim Government (Darwish 2021). At the end of the day, whoever controls territory controls governance and the administration of justice (Provost 2021). Thus, the FSJC did not succeed in their goal to establish a functioning judicial system in the liberated regions of northern Syria because of the ongoing fighting for the control of territory and political power.

7. Conclusion

The judicial acts of resistance carried out by Syrian prosecutors and judges aimed to counter oppressive legislation enacted by the Assad regime to suppress the popular uprising of March 2011. These members of the judiciary did not want to be remembered as the submissive supporters of a regime that continues to systematically violate the rights and freedoms of the Syrian people.

The sometimes overt but mainly covert actions of these anti-regime prosecutors and judges aimed to release as many people as possible who were arbitrarily detained, and possibly risked torture and death while in custody. Trial judges aimed to alleviate heavy fines imposed on an impoverished population who simply wanted to acquire a minimum of rights to better survive the everyday burden of living in a corrupt and unjust political system. These prosecutors and judges also aimed to properly document the suspicious deaths of civilians and soldiers, and investigate the massacres of innocent villagers and townspeople in order to bring the guilty parties to justice.

Even after they resigned from the state judiciary and established the FSJC to administer justice, prosecutors and judges proved to be utterly committed to the rule of law. First of all, they were determined to apply Syrian legislation and not replace it with non-state law. They followed established prosecutorial and investigative procedures before they

filed charges against state officials, military commanders, pilots, financiers of militias, militiamen and common criminals. The arrest warrants they issued were faithful replicas of official legal documents. When they gained control of the state court facilities, they offered as best they could the same services to the population: complaints were received by the prosecution office, investigations were conducted, in and out of court, damage to property was dutifully noted and confirmed by on-site visits with the intention that owners might eventually receive compensation for their losses; accusations against individuals were dropped where proof was insufficient, and they strove to protect the rights and lives of prisoners accused of collaborating with the regime, though it later transpired that they failed to do so because of a lack of material support and their dependence on local armed opposition groups who perhaps were not as committed to protecting the freedoms and rights of their fellow citizens identified as “the enemy”. In the end, their attempts to collectively organise and establish a functioning judicial system did not succeed because of the absence of some form of state infrastructure and governance in addition to a stable and reliable police force which could maintain social order and security, guarantee the execution of court decisions and operate correctional services. In addition, these former state prosecutors and judges were often shunned by oppositional armed groups who set up their own courts to administer justice.

When prosecutors and judges openly resigned from office, they were not rejecting the State, rather they were distancing themselves from the Asad regime and the executive authorities. In their opinion, they were still the faithful servants of the State who had pledged to uphold the law, and it was their respect of that oath that gave them the authority to investigate and prosecute those who violated the law and the basic rights of citizens. In many of their statements, members of the FSJC pledged to respect Syrian legislation prior to the March uprising. In other words, they willingly rejected the Presidential Decrees enacted after March 2011 which directly violated the legal rights of Syrians and the independence of the judiciary. The judicial resistance to implement these decrees and the ensuing resignation of prosecutors and judges were actions motivated by a moral stance on the part of these professionals: ultimately, they refused to make decisions that violated people’s basic freedoms and rights, even if those decisions were sanctioned by the law. The acts of judicial resistance of the Syrian prosecutors and judges described in this article challenge the notion that members of the judiciary are to act only within the strict limits of the law, no matter what the law dictates. Hopefully their actions will contribute to rehabilitating the reputation of the judiciary and restoring the confidence of the public in the justice system in a post-Asad, post-authoritarian Syria.

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