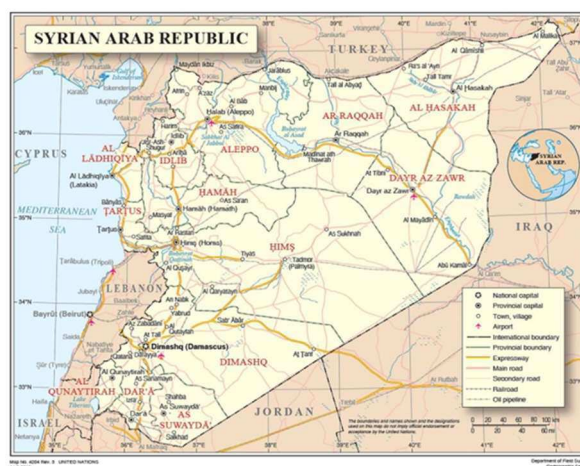


# Syria

*Consequences of leaving a  
public sector position without  
notice*



Ministry of Immigration  
and Integration

The Danish  
Immigration Service

This brief report is not, and does not purport to be, a detailed or comprehensive survey of all aspects of the issues addressed. It should thus be weighed against other country of origin information available on the topic.

The brief report at hand does not include any policy recommendations. The information does not necessarily reflect the opinion of the Danish Immigration Service.

Furthermore, this brief report is not conclusive as to the determination or merit of any particular claim to refugee status or asylum. Terminology used should not be regarded as indicative of a particular legal position.

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## Executive summary

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Since the beginning of the Syrian conflict in 2011, many Syrian public employees have left their jobs in the public sector in order to escape the war. Some exited Syria without informing their employers or without getting permission from their employers, whereas others managed to get a permission to go on vacation, although Syrian authorities rarely approved such permissions. However, most public sector employees did not return to their positions. Therefore, according to Syrian law, they have committed the offence of leaving their public position without notice.<sup>1</sup>

From 2011 until 2017, an estimated 138,000 cases regarding public sector employees have been brought before the courts in Syria. In 50,000 cases a verdict was reached: most public sector employees were convicted in absentia.

If a Public sector employees convicted of leaving their position without notice will be arrested upon return to Syria.

A high-level public sector employee could risk being charged for violating the anti-terrorism law of 2012, as the Syrian government considers their defection from their public sector position a political action or an anti-government activity.

Presidential decrees issued in September 2019 and March 2020 granting amnesty to those convicted of leaving a public sector position have been implemented. The amnesty also covers public sector employees with pending cases for leaving ones position without notice.

There are no consequences for family members of public sector employees, who have left their positions without notice.

The forgery of Syrian court verdicts for leaving ones position without notice is taking place, especially among Syrians residing outside of Syria.

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<sup>1</sup> Syrian Lawyer Club, *كل شئى عن جرم ترك العمل في القانون السوري* [Everything about the offence of leaving one's position according to the Syrian law], 18 September 2019, [url; MFA: 35](#)

## Table of contents

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<b>Executive summary</b> .....	<b>1</b>
<b>Introduction</b> .....	<b>3</b>
1. Syrian law on leaving a public position without notice.....	5
2. Implementation of the law.....	6
2.1. Proceedings of court cases against public sector employees.....	7
2.2. Implementation of Penalties.....	8
2.3. Possibility of appealing a verdict and statute of limitations.....	9
3. Wanted lists.....	10
4. Amnesties.....	10
5. “Status settlement” prior to return.....	12
6. Consequences for family members.....	12
7. Prevalence of forgeries of Syrian court verdicts.....	12
<b>Bibliography</b> .....	<b>13</b>
<b>(Annex I)</b> .....	<b>14</b>
<b>Meeting minutes, Riad Ali, Syrians for Truth and Justice. Telephone interview 08.02.2021</b> .....	<b>14</b>
<b>Meeting minutes with a Syrian Lawyer, skype interview 03.03.2021</b> .....	<b>18</b>
<b>MFA Hearing of 12. March 2021</b> .....	<b>21</b>
<b>Annex II: Terms of reference</b> .....	<b>33</b>

## Introduction

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Syria and other countries in the Middle East and North Africa have some of the largest public sectors in the world. In 2010, before the Syrian conflict began, the US Department of State estimated that public sector employees constituted about 30 % of the total labor force in Syria and were generally paid low salaries and wages.<sup>2</sup>

Since the beginning of the Syrian conflict in 2011, many Syrian public employees have left their jobs in the public sector in order to escape the war. Some exited Syria without informing their employers or without getting permission from their employers, whereas others managed to get a permission to go on vacation, although Syrian authorities rarely approved such permissions. However, most public sector employees did not return to their positions. Therefore, according to Syrian law, they have committed the offence of leaving their public position without notice.<sup>3</sup>

This brief report focuses on the consequences of leaving a public sector position without notice in Syria. The report is a follow-up to the report: *Syria – Consequences of Illegal exit, Consequences of Leaving a Civil Servant Position Without Notice and the Situation of Kurds in Damascus*, June 2019, [url](#).

The purpose of the report was to present updated information on issues relevant for the processing of Syrian asylum cases. The Terms of Reference (ToR) are included in the end of the report (Appendix 2).

This report is based on information collected through Skype interviews with two sources selected by virtue of their expertise on the topic, supplemented with relevant written sources, as well as information provided by the Danish Ministry of Foreign Affairs.

Minutes written from the interviews were forwarded to the sources for their approval, giving them a chance to amend, comment or correct their statements. Both sources approved their statements. One source agreed to be quoted by name and organisation, while the other source, as well as the source providing information to the MFA, requested anonymity.

For the sake of reader-friendliness, transparency and accuracy, paragraphs in the meeting minutes in Appendix 1 have been given consecutive numbers, which are used in the report when referring to the statements of the sources in the footnotes.

The report is a synthesis of the information obtained from oral and written sources and does not include all details and nuances provided by the sources. In the report, the information of the sources has been presented as accurately and transparently as possible.

The report was written in accordance with the EASO COI Report Methodology.<sup>4</sup>

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<sup>2</sup> Ragui Assaad, Ghada Barsoum, *Public employment in the Middle East and North Africa*, August 2019, [url](#); US, Department of State, *Syria background Note*, 2010, [url](#)

<sup>3</sup> Syrian Lawyer Club, *كل شيء عن جرم ترك العمل في القانون السوري* [Everything about the offence of leaving one's position according to the Syrian law], 18 September 2019, [url](#); MFA: 35

<sup>4</sup> EASO, *EASO Country of Origin Information (COI) Report Methodology*, June 2019, [url](#)

Finally, attention should be called to the volatile situation in Syria and the fact that the information provided may quickly become outdated. Therefore, the issues addressed in this brief report should be monitored periodically and brought up to date accordingly.

The research and editing of this brief report was finalised on 16 April 2021.

The brief report can be accessed from the website of DIS, <http://www.newtodenmark.dk>, and is thus available to all stakeholders in the refugee status determination process as well as to the general public.

## 1. Syrian law on leaving a public position without notice

All individuals working in the Syrian state and its institutions are considered public sector employees and subject to the Syrian Civil Servant law No. 50 of 2004.<sup>5</sup> This includes both individuals employed in a ministry or government agency and individuals employed as, for example, teachers in public schools or health care professionals working in the Syrian public health care sector.<sup>6</sup>

A public sector employee who has left his/her position without notice is subject to the Civil Servant Law no. 50 of 2004 and Article no. 364 of the Penal Code.<sup>7</sup>

According to the Civil Servant Law No. 50 of 2004, an employee who leaves his or her work without justifiable permission and who does not resume work within 15 days, is considered as having resigned. However public employees are not allowed to leave their position permanently, before his or her resignation has been accepted from his or her workplace.<sup>8</sup>

Under Article 364 of the Penal Code, a public employee commits an offence, when he or she leaves his or her position without notice or permission. The penalty for this type of offence is imprisonment of three to five years and a fine equivalent to a monthly salary plus the repayment of bonuses received in the year leading up to the offence. Individuals, who have an obligation to work in a public position as a condition for receiving a scholarship, will also have their movable and immovable properties confiscated, if they refrain from their obligation to serve in the public sector. Furthermore, public servants who leave office without notice are deprived of all their financial rights with the state (e.g. retirement benefits, end of service payments, etc.).<sup>9</sup>

An employee will be exempted from punishment, if his workplace accepts his resignation within three months from the date a lawsuit was filed against him or her. Likewise, an employee who has committed the offence of leaving his work without notice once, will not be punished if he or she puts him/herself at the disposal of his or her employer within three months from the date a public lawsuit was filed against him or her. In addition, the employee will be allowed to resume his or her position if the employer permits it.<sup>10</sup>

The criminal court must consider the existence of legitimate reasons for the public employee's absence from work, such as sickness, disability, arrest or deprivation of freedom, if the defendant presents the aforementioned reason to the court before trial proceedings. If the employee's absence is justified by the court, the employee will not be punished.<sup>11</sup>

<sup>5</sup> Parliament of the Syrian Arab Republic, قانون 50 لعام 2004 نظام العاملين الأساسيين في الدولة [Law No. 50 of 2004 for State Employees], n.d., [url](#)

<sup>6</sup> Riad Ali - Syrians for Truth and Justice: 1:

<sup>7</sup> Parliament of the Syrian Arab Republic, قانون 50 لعام 2004 نظام العاملين الأساسيين في الدولة [Law No. 50 of 2004 for State Employees], n.d., [url](#); Elan, جرم ترك العمل في القانون السوري [the crime of leaving work in the Syrian law], n.d., [url](#)

<sup>8</sup> Parliament of the Syrian Arab Republic, قانون 50 لعام 2004 نظام العاملين الأساسيين في الدولة [Law No. 50 of 2004 for State Employees], n.d., [url](#)

<sup>9</sup> Elan, جرم ترك العمل في القانون السوري [The crime of leaving work in the Syrian law], n.d., [url](#)

<sup>10</sup> Elan, جرم ترك العمل في القانون السوري [The crime of leaving work in the Syrian law], n.d., [url](#)

<sup>11</sup> Elan, جرم ترك العمل في القانون السوري [The crime of leaving work in the Syrian law], n.d., [url](#)

The statute of limitations for the crime of leaving a public sector position without notice is three years from the date of the perpetration of the offence.<sup>12</sup> More specifically, if a charge for leaving one's position is not filed within three years, the Syrian authorities forfeits the possibility to prosecute an individual for this offence.<sup>13</sup>

## 2. Implementation of the law

Since the start of the war in 2011 and until 2017, the number of cases of leaving a public position without notice brought before the courts is estimated at 138,000, with 50,000 cases in which a verdict was given. Of those 50,000 cases, 38,000 were decided in favor of the state and 12,000 in favor of the public servant.<sup>14</sup> Most public sector employees have been convicted in absentia for leaving their position without notice.<sup>15</sup>

In 2018, the number of cases pending before criminal courts (both first instance and appeals courts) in Damascus and Rural Damascus governorates were more than 1000 cases. Moreover, for the same year, Damascus Criminal Courts received an average of 40 cases per month for leaving a public sector position without notice.<sup>16</sup>

Many cases have been pending before criminal courts in Syria for the year 2020. The exact number of pending cases is unknown, as the Syrian Ministry of Justice has not published the number of cases in which verdicts have been given. The information related to the offense of leaving a public sector position without notice is a sensitive topic in Syria, as it relates to the functioning of the state and its various departments.<sup>17</sup>

The Syrian Observatory for Human Rights reported in January 2019 that many public sector employees in Syria had been denied the permission to return to their positions by their employers, in spite of the court having ruled in their favor.<sup>18</sup> However, another article reported in March 2019, that many court decisions (related to article 364) had been issued exempting employees from a penalty on the condition they return to their public position. The article assessed that the Government of Syria (GoS) is in need of manpower, as the functioning of its institutions and departments is affected by the exit of tens of thousands of its employees. It further reads in the article, that in order to prevent public employees from leaving Syria, the GoS had imposed more conditions on employees who want to spend their vacations outside Syria, even in cases of unpaid vacations. Firstly, a person working in the public sector needs to obtain a vacation or permission for leave of absence. In addition, the person must also provide a sponsor, which is another employee, confirming that he will complete the work assigned to the person on vacation, in case this person does not return.<sup>19</sup> One source stated that Syrian authorities have rarely granted such permissions to public servants.<sup>20</sup> In addition,

<sup>12</sup> Elan, *جرم ترك العمل في القانون السوري* [The crime of leaving work in the Syrian law], [url](#)

<sup>13</sup> Riad Ali - Syrians for Truth and Justice: 28; Syrian lawyer: 14-1; MFA hearing of 12. March 2021: 36-37

<sup>14</sup> MFA Hearing of 12 March 2021: 5, The 138,000 cases includes cases from both the public and private sector for more information see: MFA Hearing of 12 March 2021: 5

<sup>15</sup> Syrian lawyer: 8; Riad Ali - Syrians for Truth and Justice: 2

<sup>16</sup> MFA Hearing of 12. March 2021: 4

<sup>17</sup> MFA Hearing of 12. March 2021: 3

<sup>18</sup> Syrian Observatory for Human Rights, *«كف اليد» يترك موظفين سوريين معلّقين بين السماء والأرض* [“Suspension of work” leaves Syrian employees suspended between heaven and earth], 10 January 2019, [url](#)

<sup>19</sup> Salon Syria, *لا إجازات، لا استقالات ولا سفر... لموظفي الحكومة* [No vacations, no resignations, no travel ... for government employees], 8 March 2019, [url](#)

<sup>20</sup> MFA hearing of 12. March 2021: 35



many resignation requests from public positions are rejected by ministries under the pretext of “lack of youths” in the public sector.<sup>21</sup>

### 2.1. Proceedings of court cases against public sector employees

Official summon letters for public sector employees charged with leaving their positions without notice are usually delivered by a bailiff to the employee. Alternatively, a bailiff may deliver the summon letter to a family member at the residence of the employee, but not to indirect family members, such as cousins and in-laws. Summons can also be delivered by the local mayor (*Mukhtar*), or be printed in local or Damascus-based newspapers. A plaintiff may also be summoned via a registered letter/secured mail addressed to the plaintiff’s known residence in Syria or abroad. A judge may also decide to notify a plaintiff via e-mail. In exceptional cases, summons can be posted on the court’s message board if the plaintiff cannot be found, or the public sector institution is located in areas outside the government’s control.<sup>22</sup>

A summons letter contains the following information:

- a) Full date when the delivery of the summon took place (day, month, year and the time);
- b) Full name of the plaintiff, its occupation and its address;
- c) Name of the court ordering the delivery of the summon and its location.
- d) Full name of the summoned, his occupation and his place of residence. If the current place of residence is unknown, his most recent known address may be used.
- e) A statement of the list of supportive documents attached to the summon (if applicable).
- f) A blank space to be filled in by the bailiff, with the name of the person who received the judicial summon, his capacity, his signature or a statement by the bailiff attesting [the attempt to deliver the summon] if the concerned person has refused to receive the summon and the reasons thereto;
- g) The bailiff shall sign both parts of the summon (the part delivered and the parts to be returned to the court).
- h) Additionally, the summon contains the case docket number, the relevant article of the Penal Code based on which the proceedings are initiated or sometimes a short description of the alleged offense and the full date and the time of the hearing to enable the summoned to learn about the case, locate court where the case is being tried and attend the trial.
- i) The summon also contains a warning to the summoned, that if he/she does not attend the court hearing on the specified date written in the summons letter, legal measures will be taken against him/her.
- j) The summon is signed by the court assistant and the trial judge and is sealed by the court.<sup>23</sup>

<sup>21</sup> Salon Syria, *لموظفي الحكومة، لا استقالات ولا سفر... [No vacations, no resignations, no travel ... for government employees]*, 8 March 2019, [url](#)

<sup>22</sup> MFA Hearing of 12 March 2021: 21-24; For a detailed overview of the issuance procedures of summons letters, the issuing authorities, as well as the template design of summons letters and the information contained in a summons letter, see the *MFA hearing of 12. March 2021: 18-28*.

<sup>23</sup> MFA hearing of 12. March 2021: 28

Public sector employees can be tried at all levels in Syria’s three-tiered justice system. A case against a public sector employee is initially brought before the First Instance Court by the State Attorney’s office. In case the verdict is appealed, the case will be tried at the Court of Appeals. The final option of appeal is the Court of Cassation.<sup>24</sup> For more information, see section 2.3 *Appeal of verdict and statute of limitations*.

## 2.2. Implementation of Penalties

The penalty for leaving a public sector position without notice is 3-5 years imprisonment.<sup>25</sup> The consulted Syrian lawyer stated that public sector employees, who have been convicted, have typically been given the maximum sentence of five years for leaving their position without notice.<sup>26</sup>

The law does not outline a difference in sentencing based on a certain profile of the individual, e.g. a high-level position in the public sector.<sup>27</sup> Riad Ali of Syrians for Truth and Justice (STJ) stated that according to the law, public sector employees are given the same penalty for leaving their position without notice, regardless of their position or job function in the Syrian public sector.<sup>28</sup> However, a Syrian lawyer said that in practice a judge will be more inclined to give a higher penalty to an individual with a higher degree of responsibility by virtue of his position in the public sector.<sup>29</sup> Two sources stated that the length of prison sentence depends on a judge’s personal preference or discretion.<sup>30</sup>

### 2.2.1 Prosecution for violating the anti-terrorism law

According to Riad Ali of STJ, high-level public employees have been referred to the anti-terrorism court for leaving their positions without notice.<sup>31</sup>

Since the beginning of the conflict in Syria in 2011, it has become more complicated for high-ranking public servants or public servants working in “sensitive jobs” to leave their positions without notice, and leaving such positions has sometimes been politicized. In such cases, a security clearance is required prior to leaving office, in addition to the required approval of the resignation of the employee by the department to which the public servant belongs. This opens the door for the “unofficial” interference of the intelligence services when this type of cases are tried in court.<sup>32</sup>

Examples of high-level public sector employees include judges, CEOs of public companies, university teachers, military officers, diplomats, ministers, vice-ministers, and heads of governorate educational departments, as such positions are considered politically sensitive.<sup>33</sup> According to Riad Ali of STJ, heads of the health care departments in the different governorates, who left their positions without notice, have been referred to the anti-terrorism court because their leave is regarded as an act of opposition to the GoS’ prohibition of health care practitioners to help injured opponents.<sup>34</sup>

<sup>24</sup> MFA hearing of 12. March 2021: 29-32

<sup>25</sup> Syrian lawyer: 1; MFA Hearing of 12. March 2021: 2; Riad Ali - Syrians for Truth and Justice: 2

<sup>26</sup> Syrian lawyer: 6;

<sup>27</sup> Syrian lawyer: 7; MFA Hearing of 12. March 2021: 11

<sup>28</sup> Riad Ali - Syrians for Truth and Justice: 2

<sup>29</sup> Syrian lawyer: 6-7

<sup>30</sup> Syrian lawyer: 6; MFA Hearing of 12. March 2021: 11

<sup>31</sup> Riad Ali - Syrians for Truth and Justice : 11

<sup>32</sup> MFA Hearing of 12. March 2021: 1, 11

<sup>33</sup> Riad Ali - Syrians for Truth and Justice: 11-12

<sup>34</sup> Riad Ali - Syrians for Truth and Justice: 14

No high-level public sector employee can be sure if he or she is accused by the GoS of having left his or her position for political reasons, unless their names have been leaked from the intelligence services. Whilst some high-level public sector employees will be aware if they are being prosecuted for violating the anti-terrorism law, others will not.<sup>35</sup> It is possible to find out if one is being prosecuted for violating the anti-terrorism law, through informal channels, by bribing public officials or through former colleagues or acquaintances within the government.<sup>36</sup>

Public sector employees, which Syrian authorities do not consider to have a political or anti-government motive for leaving their position without notice, will not be prosecuted for violating the anti-terrorism law.<sup>37</sup>

### *2.3. Possibility of appealing a verdict and statute of limitations*<sup>38</sup>

According to Riad Ali and the Syrian Lawyer, an individual must be present in Syria in order to appeal a verdict. It is not possible to appeal a verdict from abroad, e.g. through an intermediary or relative. A lawyer representing a public sector employee can also not appeal a verdict on behalf of a public sector employee if he is not present in Syria.<sup>39</sup>

Contrary to the information above, according to the MFA hearing of 12 March 2021, it is possible for a convicted public servant who lives abroad to submit a petition through an attorney in Syria. It is possible for a person, who cannot appoint an attorney, to have one of his relatives to apply with a sharia court to get authorization to appoint an attorney. The attorney can then request the attorney general to revoke the verdict against the individual.<sup>40</sup>

If an individual has been sentenced in absentia by the First Instance Court, he/she has five days to object the decision. If the defendant has not personally been notified of the court's ruling, or if the prosecutor cannot surely establish that the defendant has learned of the ruling, the deadline for objection remains open until the expiration of the statute of limitations, which is twice the length of the sentence given in a case. If the First Instance Court approves the objection, the verdict will be annulled and the case is dropped.<sup>41</sup>

If the First Instance Court rejects the objection to the verdict, the case may be appealed within ten days after the court's decision to the Appeals Court. It is possible to appeal an Appeals Court verdict to the Court of Cassation within 30 days of the Appeals Court's decision. The court of Cassation will only rule on the illegality of the previous court proceedings or a wrongful interpretation of the law by the Appeals Court, if the decision by appeals court was not sufficiently reasoned or it appeared ambiguous.<sup>42</sup>

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<sup>35</sup> Riad Ali - Syrians for Truth and Justice: 9, 13

<sup>36</sup> Riad Ali - Syrians for Truth and Justice: 9, 13

<sup>37</sup> Riad Ali - Syrians for Truth and Justice: 6, 14-15

<sup>38</sup> For a detailed overview of the appeals process in the three-tier Syrian judicial system, see MFA hearing of 12 March: 29-32

<sup>39</sup> Syrian lawyer: 11; Riad Ali - Syrians for Truth and Justice: 22, 25-26

<sup>40</sup> MFA Hearing of 12 March 2021: 16-17

<sup>41</sup> MFA hearing of 12. March 2021:29-30; Syrian lawyer: 15

<sup>42</sup> MFA hearing of 12. March 2021:31-32

### 3. Wanted lists

There are two types of wanted lists used by the Syrian authorities. One type is managed by the intelligence services and called the *security wanted list* (Arabic: النشرة الأمنية [al-nashra al-amnia]). The other type belongs to the courts and the police, and is called the *police list/bulletin* (Arabic: النشرة الشرطية [al-nashra al-shortia]).<sup>43</sup>

Public sector employees convicted in absentia for leaving their position without notice are not placed on the wanted lists that are managed by intelligence services, unless these entities have assessed that there is a political reason behind leaving the position or the employee has committed what the intelligence services consider as anti-government crime.<sup>44</sup>

A public sector employee is, however, placed on the police list if the First Instance Criminal Court issues a verdict against him in absentia, and the verdict is not appealed or the verdict was appealed, but the Appellate Court and the Court of Cassation confirmed it. The names of the convicted are recorded with the criminal police (Police Bulletin or Nashra Shourtieh), and are also delivered to the Immigration and Passports Department, whose duty is to arrest those on the police list once as they return to Syria through any official borders post.<sup>45</sup>

It is not possible to check if a person is on the *security services wanted lists*, as the content of these lists is secret. However, it is possible for a Syrian lawyer, with the help of Syrian law enforcement officials, to get access to the police wanted list to check if an individual's name is on it.<sup>46</sup>

### 4. Amnesties

To have a verdict cancelled or annulled, a legitimate reason is required by the court, such as either illness or detainment by Syrian government entities or opposition groups.<sup>47</sup> The only other way a court verdict issued against a public servant, who left his or her position without notice, can be waived, is through the amnesty law, which waives the prison sentence imposed by the court but not the fines.<sup>48</sup>

In September 2019, Legislative Decree no. 20 of 2019 was issued giving amnesty to crimes and offences committed before the date of the decree issuance.<sup>49</sup> A similar decree was issued in March 2020, namely

<sup>43</sup> Syrian lawyer: 18-19; Riad Ali - Syrians for Truth and Justice: 29; MFA Hearing of 12. March 2021: 41

<sup>44</sup> Syrian lawyer: 18-19; Riad Ali - Syrians for Truth and Justice: 29; MFA Hearing of 12 March 2021: 41

<sup>45</sup> MFA Hearing of 12. March 2021: 41

<sup>46</sup> Riad Ali - Syrians for Truth and Justice: 30; Syrian lawyer 21

<sup>47</sup> Riad Ali - Syrians for Truth and Justice:23-24, 27

<sup>48</sup> MFA hearing of 12. March 2021: 33; Syrian Arab News Agency (SANA), الرئيس الأسد يصدر مرسوماً تشريعياً يقضي بمنح عفو عام عن الجرائم المرتكبة قبل 14-9-2019 [President al-Assad issues a legislative decree granting a general amnesty for crimes committed before 14-9-2019], 14 September 2019, [url](#); Syrian Arab Republic – Presidency of the Council of Ministers, المرسوم التشريعي رقم 6/ لعام 2020 القاضي بمنح عفو عام عن الجرائم المرتكبة قبل تاريخ 22-3-2020 [Legislative Decree no. 6 of 2020 granting general amnesty for crimes committed before 22-3-2020], 22 March 2020, [url](#)

<sup>49</sup> Syrian Arab News Agency (SANA), الرئيس الأسد يصدر مرسوماً تشريعياً يقضي بمنح عفو عام عن الجرائم المرتكبة قبل 14-9-2019 [President al-Assad issues a legislative decree granting a general amnesty for crimes committed before 14-9-2019], 14 September 2019, [url](#)

Legislative Decree no. 6 of 2020, giving amnesty to crimes and offences committed before the date of issuance.<sup>50</sup> Both decrees included an amnesty for people who had committed the offence of leaving their public position without notice. The amnesty in both decrees exempts the public sector employee from imprisonment, but not from the payment of the fines imposed by Article 364 of the Penal Code.<sup>51</sup> Two sources informed DIS that no public sector employee should be prosecuted for leaving their position without notice, according to the amnesties, if they left the position before the decree was issued. All previous verdicts issued by Syrian courts are supposed to be cancelled as well due to the decrees.<sup>52</sup>

The MFA hearing of 12 March 2021 informed that amnesties concerning public sector employees are implemented in Syria.<sup>53</sup> Sources stated that, a convicted public sector employee returning to Syria from abroad to make use of the amnesty will be arrested at the border in order to be brought before a judge. The amount of time an individual will spend in pre-trial detention depends on when he or she can be presented before the court, in which he or she was originally convicted.<sup>54</sup> According to Riad Ali of STJ, once in court, the judge will then immediately release the person in accordance with the amnesty. This only happens if the person did not leave his position for political reasons, or for reasons deemed political or anti-government by the Syrian authorities, in which case the amnesties do not apply.<sup>55</sup>

If the Syrian authorities believe a political motive is the reason for leaving one's position without notice, public sector employees will be pursued by the Syrian intelligence services and risk being prosecuted for violating the anti-terrorism law (No. 19 2012)<sup>56</sup>

With regards to making use of this amnesty for Syrians who live outside Syria, the MFA informed that public servants who were sentenced to imprisonment and a fine in absentia by the First Instance Criminal Court, for leaving office without notice, before the issuance of the decree No. 6 of 22 March, 2020, are allowed to submit a petition through their attorneys present in Syria to Syria's attorney general and ask him to waive the sanction decided by the court.<sup>57</sup> For cases which were pending at criminal courts in Syria when the amnesty of decree No. 6 of 22 March, 2020 was issued, a judge will decide to drop the case against public servant.<sup>58</sup>

Riad Ali of STJ and the Syrian lawyer were not aware of specific cases in which individuals had made use of the amnesty.<sup>59</sup>

<sup>50</sup> Syrian Arab Republic – Presidency of the Council of Ministers, المرسوم التشريعي رقم 6/ لعام 2020 القاضي بمنح عفو عام عن الجرائم المرتكبة قبل تاريخ 22-3-2020 [Legislative Decree no. 6 of 2020 granting general amnesty for crimes committed before 22-3-2020], 22 March 2020, [url](#)

<sup>51</sup> Syrian Arab News Agency (SANA), 2019-9-14 الرئيس الأسد يصدر مرسوماً تشريعياً يقضي بمنح عفو عام عن الجرائم المرتكبة قبل 14-9-2019 [President al-Assad issues a legislative decree granting a general amnesty for crimes committed before 14-9-2019], 14 September 2019, [url](#); Syrian Arab Republic – Presidency of the Council of Ministers, المرسوم التشريعي رقم 6/ لعام 2020 القاضي بمنح عفو عام عن الجرائم المرتكبة قبل تاريخ 22-3-2020 [Legislative Decree no. 6 of 2020 granting general amnesty for crimes committed before 22-3-2020], 22 March 2020, [url](#)

<sup>52</sup> Syrian lawyer: 9; MFA Hearing of 12 March 2021: 15; Riad Ali - Syrians for Truth and Justice: 3-4, 9

<sup>53</sup> MFA Hearing of 12. March 2021: 16

<sup>54</sup> Riad Ali - Syrians for Truth and Justice: 7; MFA Hearing of 12. March 2021: 41

<sup>55</sup> Riad Ali - Syrians for Truth and Justice: 8-9

<sup>56</sup> Syrian lawyer: 10; Riad Ali - Syrians for Truth and Justice: 6, 11

<sup>57</sup> MFA Hearing of 12 March 2021: 16-17

<sup>58</sup> MFA Hearing of 12 March 2021: 17

<sup>59</sup> Riad Ali - Syrians for Truth and Justice: 6, 9; Syrian lawyer: 16

## 5. “Status settlement” prior to return

It is not possible to apply for a “status settlement” (Arabic: Taswiat wada)<sup>60</sup> to settle the outstanding issue of having left one’s position without notice at a Syrian embassy abroad, prior to returning to Syria. Syrian embassies have the authority to grant “status settlements” in other cases, but not in this type of case.<sup>61</sup>

It is also not possible to go through a “status settlement” process, for having left a public sector position without notice, directly at the Syrian border with Syrian authorities. The individual will be arrested by Syrian police and brought before a judge that will release him/her cf. decree No. 6 of 2020, because no one is prosecuted for leaving a public sector position without notice any longer.<sup>62</sup>

## 6. Consequences for family members

There are no consequences for family members of public sector employees, who have left a public sector position without notice, unless the Syrian government believes there is an anti-government or a security related issues in the case. The civil servant law does not criminalize family members of public sector employees, who have left their positions without notice.<sup>63</sup>

## 7. Prevalence of forgeries of Syrian court verdicts

According to the MFA hearing of 12 March 2021, for Syrians residing outside of Syria, forgeries of Syrian court verdicts, for leaving ones position without notice, is taking place. This is because it allows Syrian citizens, claiming asylum or a similar type of protection status in their host country, to prove a potential prosecution in case they return to Syria and, thus, consequently prevent their repatriation to Syria. Forgeries of courts verdicts related to the offense of leaving one’s position is less reported from inside Syria.<sup>64</sup>

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<sup>60</sup> For an an additional overview of settlement procedures and security clearance for returnees to Syria, please see Denmark, DIS, *Syria, Security clearance and status settlement for returnees*, December 2020, [url](#)

<sup>61</sup> Riad Ali - Syrians for Truth and Justice: 33; MFA hearing of 12. March 2021:42

<sup>62</sup> Riad Ali - Syrians for Truth and Justice: 34

<sup>63</sup> Riad Ali - Syrians for Truth and Justice: 35; Syrian lawyer: 28-29

<sup>64</sup> MFA hearing of 12. March 2021: 43

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<https://stj-sy.org/en/>, accessed 15 April 2021

(Annex I)

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## Meeting minutes, Riad Ali, Syrians for Truth and Justice. Telephone interview 08.02.2021

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Riad Ali is a former Syrian judge now associated with the civil society organisation Syrians for Truth and Justice, <https://stj-sy.org/en/>.

### **The consequences of leaving a public sector position without notice**

1. All individuals employed in the public sector are considered public sector employees and are subject to the Syrian Civil Servant law No. 50 of 2004. This includes both individuals employed in a ministry or government agency and also individuals employed as teachers in the public school system or health care professionals working in the Syrian public health care sector.
2. According to the Civil Servant Law, the penalty for leaving a public sector position without notice is three years of imprisonment and a fine equivalent to one month's salary. All convicted public sector employees are given the same penalty for leaving their position without notice, regardless of their position or job function in the Syrian public sector. There are no mitigating circumstances according to the law. Most public sector employees were convicted in absentia prior to the decree No. 6 issued in March 2020.

### **Amnesties and decrees issued by the Government of Syria regarding public sector employees/civil servants leaving their positions without notice**

3. The following amnesties have been issued since the start of the Syrian conflict: No. 61 issued on 31 May 2011, no. 71 issued on 23 October 2012, no. 23 on 16 April 2013, no. 22 on 9 June 2014, no. 20 on 14 September 2019, and no. 6 issued on 22 March 2020 which included article 10 section C regarding public sector employees leaving their position without notice. No public sector employees are currently being prosecuted for leaving their position without notice, due to decrees and amnesties issued by the GoS.
4. To the source's knowledge, the latest decree was decree no. 6, which was issued on March 22, 2020. The decree applies to all pending cases before the decree was issued on March 22, 2020. All previous verdicts issued by Syrian courts are supposed to be cancelled as well due to the decree. The source does not know of cases where this amnesty has been implemented.



5. The source assumes that civil servants, who left their positions without notice and went outside Syria, do not trust the GoS and the intelligence services and fear that the authorities regard that there is a political motive behind leaving one's position.
6. However, if the Syrian authorities believe that there is a political motive behind leaving one's position without notice, public sector employees will risk being prosecuted for violating the anti-terrorism law (No. 19 2012). The source does not know cases of public sector employees that have been prosecuted for violating the anti-terrorism law, however, the source assumes that there are cases of public employees, who left their positions without notice, who have been referred to the anti-terrorism court.
7. In accordance with the amnesty, a convicted public sector employee returning to Syria from abroad will be arrested at the border in order to be brought before a judge. The length of the persons detention depends on what day the person enters Syria and the location of the court he is required for. For example, if the person is detained just before the weekend where the courts are closed, he will have to wait in detention two days before he can be brought before a judge. If, for example, the person is detained in Damascus but is wanted by the court in Hassakah where he will be transferred, it may take more than ten days to before he can be brought before a judge.
8. The judge will then immediately release the person in accordance with the amnesty. This only happens if the person did not leave his/her position for political reasons, or for reasons deemed political or anti-government by the Syrian authorities.
9. The source does not know of any individuals convicted of having left their public sector position without notice and who have since returned to Syria. Therefore he does not know whether the decree is enforced in practice, for Syrians returning to Syria from abroad. According to the source, no one can be sure if they are accused of having left their position for political reasons, unless their names have been leaked from the intelligence services.
10. Although a public sector employee will not be punished for leaving his/her position without notice, due to the decree, they cannot return to their jobs and they lose their right to their government pensions.
11. However, high-level public sector employees will risk being prosecuted for violating the anti-terrorism law (No. 19 2012), if they have left their jobs without notice, and they will be tried at the anti-terrorism court. The source has heard that high-level public employees who were political opponents have been referred to the anti-terrorism court for leaving their positions without notice.
12. Examples of high level public sector employees include judges, CEOs of public companies, university teachers, military officers, diplomats, ministers, Vice-ministers, and heads of governorate educational departments, because such a position is considered politically sensitive. A head of a local government traffic department will automatically be tried in front of the anti-terrorism court because officers are employed as heads of traffic departments.
13. Some high-level public sector employees will be aware if they are being prosecuted for violating the anti-terrorism law. Other high-level public sector employees will not be aware of it. It is possible to find out if one is being prosecuted for violating the anti-terrorism law by bribing public officials or finding out through former colleagues or acquaintances in the government.
14. Doctors who do not have a political motive for leaving their position will not be prosecuted for violating the anti-terrorism law. However, heads of the health care departments in the different governorates who left the positions without notice are referred to the anti-terrorism court because

the GoS regards their leave as an act of opposition to the GoS' prohibition of health care practitioners to help injured opponents.

15. Other public sector employees who are not considered to have a political or anti-government motive for leaving their position without notice will not be prosecuted for violating the anti-terrorism law.

### **The procedure for prosecutions against public sector employees for leaving their position without notice**

16. A public sector employee who has left his/her position without notice is subject to law no. 364 in the criminal code. A public sector employee who has left his/her position without notice, without giving a reason for the absence, is considered to have left his/her job and to have committed a crime.
17. The following steps constitute the procedure for the prosecution of public sector employees for having left their position without notice:
18. If the public institution, in which the individual is employed, wants the absent employee prosecuted, the institution will after 15 days of undeclared absence report the absence to the State's Attorney Office, also known as the Public Prosecutor. The State's Attorney's Office is responsible for prosecuting criminal cases on behalf of the state.
19. The State Attorney's office will charge the public sector employee with having violated law no. 364 of the criminal code.
20. The State Attorney will bring the case before the 1<sup>st</sup> instance criminal court, known in Arabic as the mahkamet bidayet al-jeza' (محكمة بداية الجزاء). This 1<sup>st</sup> instance court handles misdemeanour- and criminal cases where the penalty ranges from one to three years imprisonment.
21. Once a verdict has been issued in a case of leaving one's position without notice, it is sent to the office that is supposed to execute the verdict. From there, the verdict will be sent to the police, under the Ministry of Interior, stating that this person must serve his/her sentence for leaving a public sector position without notice.

### **The Possibility of appealing or cancelling a verdict or charge for leaving one's position without notice**

22. If a public sector employee is convicted in absentia for leaving his/her position without notice, and wishes to have the verdict cancelled or appealed, the individual must present himself/herself at the court by which he/she was convicted. If the individual can justify that that he/she was absent for legitimate reasons, the verdict can be annulled.
23. Likewise, an indictment or charge for leaving one's position can also be annulled if the individual can justify that that he/she was absent for legitimate reasons.
24. Legitimate reasons include: Illness or being detained or arrested by an entity of the Syrian government that has not notified the family or other authorities, e.g. one of the Syrian Intelligence Services. Having been detained by an opposition group such as the Islamic State, the Turkish sponsored Syrian National Army or the Kurdish led SDF or YPG forces, are also considered a legitimate absence. To prove that he/she was detained by the above mentioned groups, he/she either needs to provide a document or declaration from the said groups indicating that he/she had

- been detained, or present witnesses who can testify that the public sector employee was arrested and detained. Former fellow detainees are also accepted as witnesses.
25. The individual in question must be present in Syria in order to appeal or request a cancellation of a case in Syria. It is thus not possible to appeal or request a cancellation of a verdict from outside of Syria.
  26. It is also not possible to appeal a verdict or request the cancellation of a verdict by proxy through an intermediary present in Syria. Neither a lawyer nor a family member can appeal or request a cancellation of a verdict on behalf of public sector employees.
  27. To have a verdict annulled, a new trial is required. If the individual presents himself/herself to a court in Syria and request a cancellation of a verdict for leaving his/her position without notice, and presents a legitimate reason for leaving his/her position (illness or detainment), the case will be annulled. A new case will then be brought before the court that will issue a new verdict.

### **Statute of limitations**

28. There is a three-year limitation period for cases of leaving one's position without notice. If a charge for leaving one's position is not filed within three years, the Syrian authorities forfeits the possibility to prosecute an individual.

### **Wanted lists**

29. Public sector employees convicted of leaving their position without notice are not put on wanted lists. Wanted lists are managed by Syria's intelligence services. Individuals will only have their name put on wanted lists if they are also suspected of having committed a crime that entails a political motive or is considered to be an anti-government crime.
30. If a public sector employee only left his position due to the general circumstances, he/she will not be put on a wanted list. A public sector employee will be wanted by the Syrian police for the regular offense of having received a sentence for having left his/her position without notice. Upon return to Syria, such an individual will figure in the Syrian police systems, but not on the wanted lists of the Syrian intelligence services.

### **Impact of leaving a public sector position while the area was controlled by the opposition or is currently controlled by opposition entities, e.g. Kurdish authorities in the northeast of Syria**

31. If a public sector employee has left his/her position in an area that was overtaken by the opposition, or if an area is currently controlled by opposition groups, the individual will be prosecuted like any other public sector employee who has left his/her position.
32. The Syrian government does not legally recognise that areas in Syria have been or are outside of its control. It is likely that the verdict can be annulled if the public sector employee is able to prove that he/she left his position because an opposition group captured an area of Syria in which the individual was working for the public sector.

## **Possibility of applying for a “status settlement” with the GoS for leaving a public sector position without notice**

33. It is not possible to apply for a “status settlement” (taswiat wada) to settle the issue of having left one’s position without notice at a Syrian embassy abroad prior to returning to Syria. Syrian embassies have the authority to grant “status settlements” in other cases, but not in these cases.
34. It is likewise not possible to make a “status settlement” at the Syrian border with Syrian authorities, for having left a public sector position without notice. The individual will be arrested by Syrian police and brought before a judge that will release him/her cf. decree No. 6 of 2020, because no one is prosecuted for leaving a public sector position without notice any longer.

## **Consequences of leaving a public sector position for one’s family members**

35. According to the source, there are no consequences for family members of a public sector employee who has left his/her position without notice.

# Meeting minutes with a Syrian Lawyer, skype interview 03.03.2021

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## **The consequences of leaving a public sector position without notice**

1. The penalty for leaving a public sector position without notice is 3-5 years imprisonment and a fine equivalent of one-year’s salary in addition to any bonuses or benefits that the employees have in the year, according to the law. The type of bonuses can for instance be a family bonus, heating bonus or a traveling bonus or any secrecy or confidentiality bonuses for public sector employees in charge of economic matters.
2. An individual is considered to be terminated from his/her position by the Syrian government, if he/she leaves the position without notice.
3. A public sector employee who leaves his/her position without notice is stripped of saved up benefits and bonuses available to public sector employees.
4. Any Syrian government institution or workplace is obliged to report to the state’s attorney’s office if a public sector employee has left a public sector position without notice. The prosecution of public sector employees can begin within two weeks of having left their position without notice. In other words, this means that a public sector employee who is absent from work without notice for two weeks will be reported to the state’s attorney and consequently be wanted by the authorities nationwide.
5. According to the Syrian lawyer, Syrian authorities are, in general, not in a hurry to convict an absent public sector employee. It can take up to two-three months before cases are tried in court. The reason for the delay is often administrative procedures.

6. Those who have been convicted have typically been given the maximum sentence of five years. Others have been given three years sentence. The length in sentencing depends on the judge's personal preferences.
7. The law does not outline a difference in sentencing based on a certain profile of the individual, e.g. a high-level position in the public sector. However, in practice, a judge will be more inclined to give a higher penalty to an individual who had had a higher degree of responsibility by virtue of his/her position in the public sector.
8. Public sector employees have mostly been convicted in absentia as they are not present during the court proceedings.

### **Amnesties and decrees issued by the Government of Syria regarding public sector employees/civil servants leaving their positions without notice**

9. According to decree No. 6 of 22 March, 2020 and any other general amnesty decree in Syria, no public sector employees should be prosecuted for leaving their position without notice if they left the position before the effective date of the decree.
10. It is noteworthy here that this does not include leaving work for political reasons where the public employee will be pursued by the intelligence services regardless the amnesty decree.

### **The procedure for prosecutions against public sector employees for leaving their position without notice**

#### **The Possibility of appealing or cancelling a verdict or charge for leaving one's position without notice**

11. An individual must be present in Syria in order to appeal a verdict. It is not possible to appeal a verdict from abroad e.g. through an intermediary or relative. A lawyer representing a public sector employee can also not appeal a verdict on behalf of a public sector employee if he/she is not present in Syria.
12. A public sector employee can appeal a verdict for having left one's position without notice. However, as the person has already been convicted, he/she will be arrested by authorities upon returning to Syria. While in custody the person has the possibility to appeal the verdict. He/she will also be able to apply for a temporary release from prison while the appeal case is being processed.
13. If it has been assessed that there is a political motive behind leaving one's position the case is referred to one of Syria intelligence agencies and then it is not possible to be released from custody.

#### **Statute of limitations**

14. The law stipulates that in case a public sector employee is not charged within 3 years of having left his/her position, the government automatically forfeits its right to prosecute the individual for leaving his/her position without notice.

15. The law stipulates that in case an individual has been convicted of leaving his/her position without notice, and has received a prison sentence, the statute of limitation period is twice as long as the sentence given in the case. This means that if the sentence is three years imprisonment, the sentence will be outdated after six years. If the individual has been sentenced to five years in prison, the statute of limitations is ten years.
16. If a convicted public sector employee returns to Syria after the statute of limitations has ensued, the individual will be arrested, imprisoned and brought before a judge, nonetheless. The individual can then petition the judge to be released due to the statute of limitations of the sentence. A lawyer will be needed to represent the individual in such cases. The source has not heard of cases of public employees who left their position without notice, where the “statute of limitations” has been applied.
17. In any event, the Statute of limitations does not have any effect on the intelligence services which will keep pursuing the public employee who leaves the job for political reasons.

### **Wanted lists**

18. According to the source there are two types of wanted lists in Syria. One which is managed by the intelligence services, known as the *security wanted list* (Arabic: النشرة الأمنية [al-nashra al-amnia]) and one that belongs to the courts and is known as the *police list* (Arabic: النشرة الشرطية [Al-nashra al-shortia]).
19. Public sector employees that have been convicted, and public employees that have been charged for leaving their position without notice, are featured on the *police list* unless it has been assessed that there is a political reason behind leaving the position where the public employee will be featured on the *security wanted list*.
20. When a public sector employee returns to Syria, his/her name can potentially be on the *police list* or on both of the *police list* and *security wanted list*, depending on whether the person is also accused of security related issues.
21. It is not possible to check if one is featured on the *security wanted list* as the content of this list is secret. It is possible for a Syrian lawyer with the help of Syrian law enforcement officials to get access to the *police wanted list* to check if an individual’s name is on it.

### **Impact of leaving a public sector position while the area was controlled by the opposition or in areas currently controlled by opposition entities, e.g. Kurdish authorities in the northeast of Syria**

22. Factors which can impact the penalty of public sector employees depend on what specific position the individual held and where he/she worked in the public sector. These are factors that impact whether a public sector employee will be charged or convicted for leaving his/her position without notice.
23. According to the Syrian lawyer, the Syrian government does not systematically implement the same type of penalties for public sector employees who left their position without notice in areas currently or previously controlled by opposition forces.

24. To exemplify this, the source mentioned one case in which a public sector employee, who had been working for a state-owned company in Daraa, had returned to his job without being prosecuted for having left his position without notice.
25. In other cases, in different areas of Daraa governorate, individuals working for state-owned companies were prosecuted for having left their positions without notice according to the Syrian lawyer.
26. According to the Syrian lawyer's assessment, this is because the Syrian authorities considered some local areas to have had a higher degree of opposition toward the government than that of other local areas in Daraa.
27. The Syrian lawyer is not aware of any additional penalties for public sector employees for having left their position without notice in the Kurdish areas of northeast Syria since the Syrian government vacated the areas in 2012.

### **Consequences of leaving a public sector position for one's family members**

28. Nothing in the civil servant law criminalizes family members of public sector employees that have left their positions without notice.
29. According to the source, there are no consequences for family members of a public sector employee who has left his/her position without notice, unless the Syrian government believes that there is an anti-government or a security related issues in the case.

## MFA Hearing of 12. March 2021

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### **What is the punishment for leaving a public sector position without notice according to Syrian law?**

2. At the outset, it is important to note that the public servant may not leave his position permanently before his resignation is accepted by the competent administrative body. In addition, since the start of the war in Syria in March 2011, a security clearance is required for the public servant to be able to leave the public office. A mere notice of leaving the public service is insufficient.
3. According to article 364 Bis of the Syrian Penal Code, the sanction for leaving public office without authorization is imprisonment between three to five years in addition to a fine not less than the monthly salary and allowances of the employee for one full year (Article 364/a). Moreover, any person who fails to fulfill his obligations to serve at a state public department because he was sent abroad on a scholarship, received a grant or was on academic leave, shall be punished with the same above mentioned sanction in addition to the seizure of all his movable and immovable assets (Article 364/b). Furthermore, public servants who leave office without notice are deprived of all their financial rights with the state (e.g. retirement, end of service indemnity, etc.) (Article 364/c); nonetheless, if the public servant returns to his/her public office within three months from starting the public lawsuit against him/her, the public servant shall be exempted from the punishment if the

offense of leaving office without notice has been committed for the first time (i.e. no repetition) (Article 364/e).

### **Has any public employee been prosecuted for leaving his/her public position without notice, within the last year?**

4. Yes, there are many cases of leaving office without notice pending before the Criminal Courts in Syria for year 2020 but we do not have an accurate number of decided cases as they have not yet been published by the Ministry of Justice for year 2020 after we checked. Information related to the offense of leaving office without notice is a sensitive topic in Syria as it relates to the state and the function of its various departments. Unlike in Jordan and Lebanon, there is no access to information law in Syria, which gives individuals a right to access information held by public bodies, or a right to information.
5. We know from secondary resources that in 2018 the number of cases of leaving office without notice, pending before Criminal Courts (First Instance and Appellate Courts) in Damascus and Rural Damascus only are more than 1000 cases. Moreover, for the same year, Damascus Criminal Courts only received the average of 40 cases of leaving office without notice per one month.
6. On the other hand, the number of cases of leaving office without notice since the start of the war in 2011 until 2017 is estimated at 138 000 lawsuits (50 000 cases decided (38000 decided in favor of the state and 12000 decided in favor of the public servant). It is worthwhile to mention that the above number of (138 000 lawsuits) includes the court cases form leaving work pending before the First Instance Labor Courts in Syria which are in charge of trying such cases in the private sector but which do not constitute an offense (i.e., in the private sector) as opposed to leaving public sector position without notice which is a misdemeanor according to article 364 Bis of the Syrian Penal Code.
7. The scope of what constitutes the misdemeanor of leaving a public position without notice is broad according to article 135 of the Basic Regulation for Public Servants in Syria issued by law no. 50 of 2004 as amended and includes leaving public office for more than intermittent 30 days during one year of service and the case of the public servant who does not resume his/her work within 15 days after the expiry of his/her licensed leave or the public servant who does not report to his/her office within 15 days following his discharge from the army, among others.

### **If so, do they live inside Syria or outside Syria? Is there a difference in punishment if a person lives outside Syria?**

8. There are no available statistics about those public servants who left the public position without notice and still leave in Syria and those who have left Syria. At any rate, the punishment is the same in either case and is decided in the above cited article 364 Bis of the Syrian Penal Code.

### **How many have been prosecuted?**

9. The Ministry of Justice did not release any statistics about the number of Syrian public servants who left the public position without notice and have been prosecuted before the courts in 2020. If such statistics exist, they have not been released yet for year 2020.



**Which types of punishments have been given for leaving one’s position without notice, for instance dismissal from one’s position, fines or a prison sentence?**

10. Judicial decisions issued in absentia, imposed imprisonment plus fines on the convicted public servant in accordance with article 364 Bis of the Syrian Penal Code. For some cases where the defendant (the public servant) appeared before the court and had valid reasons to leave office without notice, accepted by the court, the defendant was absolved.
11. Once the public servant is sentenced by the Court for leaving office without notice, he/she is dismissed from the public service. Whereas public servants who were absolved by the Court, may solicit the administration to reinstate them but there is no legal obligation for the administration to do so.

**What factors can impact the punishment received by a public sector employee who has left his/her job without notice? For instance:**

**Does the punishment depend on the type of the position the person has left or the sector the person has been employed within? For instance, does a school teacher receive the same punishment as an employee in a ministry? Or does a high-ranking employee within the health sector receive the same punishment as low-level employee (for instance a cleaner) within the educational sector?**

12. No, in principle the punishment does not depend on the type of the position the person has left or the sector the person has been employed at. However, the judge upon his discretion and based on the circumstances of the case, may decide to apply the lower limit of the sanction (i.e. 3 years imprisonment) or its higher limit (i.e. 5 years of imprisonment). Moreover, article 364 Bis paragraph D clearly provides that neither the attenuating circumstances nor the provisions related to staying the enforcement of the sanctions stated in the Penal Code apply to the offense of leaving office without notice; nevertheless, the trial judge investigates if there are any legitimate reasons which compelled the defendant to leaving the public service without notice, such as the sickness or disability or arrest of the defendant or being imprisoned by Non-State Armed Groups (NSAGs) in areas outside the state control. It is appropriate to mention that in some sensitive cases involving high ranking public servants or public servant working in “sensitive jobs” leaving office without notice, the situation might get more complicated and the case get politicized, namely after the start of the war in Syria in 2011, where in addition to the required approval of the resignation of the employee by the department to which the public servant belongs, a security clearance is also required prior to leaving office, which opens the door for the “unofficial” interference of the intelligence service in the case before the judge.

**Would it have any impact on the punishment if the person’s place of work were located in currently opposition-controlled areas, such as Kurdish controlled areas in northeast Syria or the Idlib area?**

13. Syrian law applies to all Syrian territories including Idlib and Kurdish controlled areas. However, the enforcement of the sanction against a public servant who left office without notice and is staying/residing in areas outside the control of the state might be impossible even if sentenced by a Syrian court. It is important to mention that for public servants from Kurdish controlled areas or Idlib, if they are able to prove that they were forced to leave office without notice as recently happened in Al-Hassake department, where Kurdish Syrian Democratic forces compelled some of the public servants from the General Organization for Seed Multiplication (GOSM) to leave their office, these public servants will be exempted from the sanction since they did not leave office by choice, but proving coercion to leave office without notice is more difficult for public servants who left Syria.

**Would it have any impact on the punishment if the person left his/her position while the area was controlled by the opposition, for instance as a teacher, health care professional or civil servant who left his/her position in ex. East Ghouta, Daara or Quneitra before the government retook control over it?**

14. As mentioned above, the trial judge has the discretion to evaluate the overall circumstances of the case at hand and to decide the appropriate sanction as decided by the jurisprudence of the Court of Cassation (the Supreme Court in Syria). The trial judge may decide that the defendant is not responsible for the commitment of the offense of leaving office without notice in case the concerned public servant was forced to run away from his area to save his life or was forced to leave his public service position by any of the fighting parties/militias or by the opposition controlling the area or any other similar scenarios. It is incumbent on the public servant to prove that he was coerced to leave his public office without notice to be absolved from the punishment. This is usually done by a police report which proves that the area for example was evacuated by the militias or was exposed to heavy fighting or any similar compelling excuse. For those public servants who left Syria, it will be more difficult for them to prove that they were compelled to leave the public office as the Court usually requires a statement from the immigration department to prove that in fact the concerned public servant was in a besieged area and did not travel outside Syria.

**Has any amnesties been issued by the Government of Syria in 2019 or 2020, regarding public sector employees for leaving their positions?**

15. Yes. In 2019, an amnesty was issued by Legislative Decree no.20 of 2019 and included the misdemeanor of leaving office without notice sanctioned by article 364 Bis of the Syrian Penal Code, if it was committed before 14 of September 2019 (Article 10). The 2019's amnesty exempted the public servant from the physical punishment (i.e. the imprisonment) but not from the payment of the fines which are still due to the state if they are mentioned in the verdict.
16. In 2020, another amnesty was issued by Legislative Decree no.6 of 2020 and included the misdemeanor of leaving office without notice sanctioned by article 364 Bis of the Syrian Penal Code, if it was committed before 22 of March 2020 (Article 10/C). The 2020's amnesty exempted the public

servant from the physical punishment (i.e. the imprisonment) but not from the payment of the fines which are still due to the state, if they are mentioned in the verdict.

### **Have these amnesties been implemented in practice?**

17. Yes. Amnesty laws are implemented in Syria as they are issued. For those public servants who were sentenced in absentia (i.e. while they were abroad) by the First Instance Criminal Court, to imprisonment and a fine, for leaving office without notice, they are allowed to submit a petition through their attorneys in Syria, to the attorney general to solicit him to include the alleged offense by the issued amnesty law and waive the sanction decided by the court against them. In addition, for convicted public servants who are abroad and cannot appoint an attorney in Syria, and their offence is covered by the amnesty law, one of their relatives may apply with the Sharia court to get authorization to appoint an attorney for them in Syria because they are absent and the attorney may solicit the attorney general on their behalf to remove the judgment against them because the alleged offence was amnestied by the law, subject to fulfillment of all other applicable legal requirements.
18. It is important to mention that for cases of leaving office without notice, which were pending before the Criminal Court when the amnesty law no.6 of 2020 has been issued, the trial judge decides to drop the public rights lawsuit against the public servant in accordance with article 436 of the Syrian Criminal Procedures Codes. Whereas, for criminal verdicts which were already issued against public servants, before the promulgation of the amnesty law of 2020, a special petition must be submitted to the attorney general to stay the prosecution of the public servant for the offense of leaving office without notice and to exempt him/her from the sanction in accordance with the amnesty law.

### **Does the information provided in the MFAs reply of 1 Nov. 2019 (see attached) still apply? DIS is particularly interested in knowing whether the information requested below under point 6, 7 8, and 9 still applies?**

19. Yes, more or less they are correct but they are incomplete. The rules on the service of the court summon stated in the MFAs reply are still applied by the courts in Syria, however, the authorities responsible for issuing the summon letters are stated in general in the reply of the MFA. The rules regarding notification of summon for a person to appear in court are laid out in detail in the new Syrian Procedures Code (SPC) no.1 of 2016.<sup>65</sup>
20. With respect to the offense of leaving work without notice which is a misdemeanor in accordance with article 364 Bis of the Syrian Penal Code, the First Instance Criminal Court is the authority in charge of issuing and notifying the summon to the concerned public servant.

### **Which authority issues and sends summons letters regarding public sector employees who have left their positions without notice?**

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<sup>65</sup> Kanoun Ousoul Al-Mouhakamat is the Code of Civil Procedure but literally translated into English from Arabic is “the Code of Procedures” in Syria and rules regarding notification of court summons laid out in it (articles 18-39) apply as well to notification of summons in criminal proceeding in accordance with article 174 of the Syrian Criminal Procedures Code.

21. Once the offense of leaving work without notice is committed by the public servant, his department refers the file to the public prosecution through the state attorney's department, to initiate legal proceedings against the concerned public servant in accordance with article 364 Bis of the Syrian Penal Code, before the competent First Instance Criminal Court which is the court that has local jurisdiction over his place of work.

### **How is a summon letter delivered to the person summoned?**

22. According to article 22 of the (SPC), the judicial summon should be delivered to the summoned in person wherever he is, unless otherwise provided in the law. This is usually done by the bailiff or the judicial police or by the military police when the summoned is a member of the army (Article 19 of the SPC).
23. The judicial summon is addressed to the concerned public servant to his address i.e., his place of residence as provided by the public department where he was working before leaving office. The bailiff takes the summon to the address designated on the judicial summon and if he does not find the summoned person in it, he is alternatively allowed to deliver the summon to the summoned agent or representative or his employee<sup>66</sup> or to any of the following persons, if they reside with him in the same place: his parents (and grandparents), children, siblings who appear physically to be over 18 years old (the legal age in Syria), provided none of them has any conflict of interest with the summoned (article 23 of the SPC). The delivery of the summon may not be done to any other persons not above specified such as other direct or indirect family members<sup>67</sup> of the summoned even if they resided with him in the same place. For example, the delivery of the summon letter to any of the in-laws of the summoned or any of his cousins (paternal or maternal), is invalid even if they resided with him in the same place.
24. If the bailiff does not find the summoned in the designated address nor any of the persons specified in article 23 of the SPC who may legally receive the summon on his/her behalf or if they refused to receive it, the bailiff shall hand over the summon to the competent mayor of the place of residence (address of the summoned) and shall affix a notice at the door of the summoned place of residence to inform him/her that the judicial summon was delivered to the competent areas' mayor which shall be done in the presence of the mayor or two of the neighbors or the police (Article 24/a). Moreover, the bailiff shall note down all the above details on the part of the judicial summon which will be returned to the court, after it is also countersigned and stamped by the competent mayor of the area (of the place of residence of the summoned) or two witnesses to certify the method used to serve the judicial summon.
25. With respect to affixing the summon to the notice board of the court, it is used in exceptional circumstances and only when the person to be summoned is legally required to appoint a selected

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<sup>66</sup> Mistakenly mentioned in the MFA reply. The summons may not be delivered to the employer of the public servant who left work without notice because of obvious conflict of interest between the two parties. Moreover, the judicial summons in the offense of leaving office without notice may not be served on the summoned to his department or to his place of work i.e., the public office which he has left without notice.

<sup>67</sup> Mistakenly mentioned in the MFA reply.

domicile for him/her and fails to do it, or when the appointed selected address is incomplete or incorrect (Article 25 of the SPC). For example, the plaintiff is legally required to appoint a selected address for him in the area of the court where he has submitted the complaint. However, it is not possible to directly (from the first time) to serve the judicial summon to the defendant (the public servant who left office without notice) by affixing it to the notice board of the court as per article 25 of the SPC. Only after attempting to serve the judicial summon to the address (place of residence) of the public servant who left the office without notice and it was established by the bailiff that the designated address was unknown (wrong or unfound) or that the public servant has left to an unknown area, it is possible to affix the summon to the Court's notice board provided the summon is also published in a daily newspaper and minutes are prepared by the Court assistant to this effect (Article 27/a of the SPC). On the other hand, if the public servant has received the summon for the first time and thereafter his address has become unknown, it is possible in this case to serve him/her the judicial summon to the same place where he received the first summon (either personally or through any of the person legally allowed to receive the summon on his behalf as outlined in article 23 of the SPC). The proper service of the judicial summon on the defendant is very important and may if incorrectly done, cause overturning the judicial decision or keeping the appeal period open.

26. Delivery of the judicial summon is also possible via secured mail with acknowledge of receipt in the following cases stated in article 28 of the SPC.:

- If the person to be summoned is residing in a foreign country and his place of residence in it is known.
- If the person to be summoned is residing in Syria and the judge decides to summon him by mail. In such a case, the postman delivers the summons to the summoned and not the Court's bailiff.
- In all other cases provided for by the law.

27. It is worthwhile to mention that according to article 34 of the new SPC, if the delivery of the summon as outlined in article 22 of the SPC (i.e. to the place of residence of the person to be summoned) has become impossible due to the exceptional circumstances in Syria (for example the area is outside the control of the state or there is intensive fighting in it), the judge may order the summon to be published in one of the capital Damascus or any other governorate center's daily newspaper in addition to affixing the summon on the court notice board. Moreover, a confirmation message may be electronically sent to the summoned.

### **Is there a standard template used for summons letters?**

28. Yes, there is a special form for court summon prepared and printed by the Ministry of Justice in Syria based on article 21 of the SPC. The standard template for Courts' summons provided by the MFA is still in use by courts in Syria.

### **What information does the letter contain?**

29. The information in the summon letter are specified in article 21 of the SPC as follows:
- a) Full date when the delivery of the summon took place (day, month, year and the time);
  - b) Full name of the Plaintiff, its occupation and its address;
  - c) Name of the Court ordering the delivery of the summon and its location.
  - d) Full name of the summoned, his occupation and his place of residence if unknown, his most recent known address may be used.
  - e) A statement of the list of supportive documents attached to the summon (if applicable).
  - f) A blank space to be filled in by the bailiff, with the name of the person who received the judicial summon, his capacity, his/her signature or a statement by the bailiff attesting if the concerned person has refused to receive the summon and the reasons thereto;
  - g) The bailiff shall sign both parts of the summon (the part delivered and the parts to be returned to the court).
  - h) Additionally, the summon contains the case docket number, the relevant article of the Penal Code based on which the proceedings are imitated or sometimes a short description of the alleged offense and the full date and the time of the hearing to enable the summoned to learn about the case, locate it with the court and attend.
  - i) The summon also contains a warning to the summoned, that if he/she does not attend the court hearing in the specified date in the judicial summon, legal measures will be taken against him/her.
  - j) The summon is signed by the court assistant and the trial judge and is sealed by the court.

### **Is it possible to appeal verdicts for having left one's position without notice?**

30. Yes. The decision of the First Instance Criminal Court ordering the imprisonment of the public servant who left office without notice is open for objection and appeal before the Appellate Court and the Court of Cassation as follows:

#### **Objection:**

31. If the decision was issued in absentia against the public servant (i.e. if the public servant was abroad, did not receive personally the summon and did not attend any of the court hearings), the sentenced public servant has the right to file an objection against the decision of the Criminal Court within five days following the date of the notification of the Court's decision on him/her in person in accordance with article 205 of the Syrian Criminal Procedure Code. The deadline to file the objection against the Criminal's Court decision remains open so long that the public servant was not personally notified with the Court's decision or it was not surely established by the public prosecution that the public servant has learned about the Courts' decision and until the expiry of the statute of limitation on the sanction of article 364 Bis of the Penal Code (Article 206/2 of the Criminal Procedure Code). The objection is usually filed with the Criminal Court which sentenced the public servant. Once the objection has been accepted by the Court because it fulfilled all the legal requirements (i.e. objection filed by the convicted public servant in person,<sup>68</sup> and in a timely fashion), the judgment against the public servant is dropped and the case is retried by the Criminal Court all over again.

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<sup>68</sup> This is a requirement by the Code of Criminal Procedure, the lawyer of the convicted alone can't do it.

## Appeal before the Court of Appeal<sup>69</sup>

32. If the objection was rejected by the trial judge for any legal reason, the decision of the First Instance Criminal Court sentencing the public servant for the offense of leaving office without notice, may be appealed before the Criminal Appellate Court within ten days following the date of the issuing of the First Instance Criminal Court decision, if the public servant was attending the hearing when the judgment was issued or if was not attending, the appeal should be filed within ten days after the notification of the Criminal Court's decision to the public servant in accordance with article 251/1 of the Code of Criminal Procedure. The appeal is submitted to the competent Appellate Court in charge of trying appeals of the First Instance Criminal Court which issued the decision against the public servant.

## Appeal before the Court of Cassation:

33. It is possible to appeal the decision issued by the Appellate Criminal Court against the public servant within 30 days following the date of the issuing of the Appellate Court decision if the public servant was attending the hearing when the judgment was issued, or within 30 days after the date of the notification of the Appellate Criminal Courts' decision to the public servant in accordance with article 343 of the Criminal Procedure Code. The appeal is submitted to the Criminal Chamber of the Cassation Court and is restricted to the legal grounds outlined in article 342 of the Criminal Procedure Code such as when the decision of the Criminal Appellate Court has violated the law, or wrongly interpret it, or was invalid for any other reason such as the illegality in the trial proceedings or any other or if the decision of the Appellate Criminal Court was not sufficiently reasoned or was ambiguous (Article 342 of the Criminal Procedures Code).

## Can court verdicts or prosecutions of public sector employees that left their positions without notice be waived by Syrian authorities?

34. The only way to waive the Court verdict issued against the public servant who left the public office without notice, is through the amnesty law which waives the offense and removes the sanction imposed by the Court as above explained. On the other hand, if the Court decision was issued in absentia against the public servant, he/she may object or appeal the decision issued against him/her, and submit to the Court his motivations/excuses for leaving office without notice (e.g. sickness, disability, arrest etc.), which if found deserving by the Court, it shall waive the punishment and declare no offense was committed by the public servant<sup>70</sup> as decided by the jurisprudence of the General Assembly of the Court of Cassation.

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<sup>69</sup> The appeal before the Criminal Appellate Court and the Cassation Court is also open for the defendant (the public servant) who attended the First Instance Criminal Court trial and the one who received the court summon but did not attend the trial.

<sup>70</sup> See please above question 10. Objection.

35. Other possible ways for the authorities to waive the violation by the public servant but before the public servant is prosecuted before the Criminal Courts are:
- If the public servant returns to his public office or make himself available for the state within three months from the date of starting the criminal proceedings against him/her (Article 364 Bis of the Penal Code).
  - If the public department/administration has issued a decision accepting the resignation of the public servant within three months from the starting of the criminal proceedings against the public servant for leaving office without notice.
  - It is possible by decision of the Chairman of the Council of Ministers based on the recommendation of the competent minister to return the resigned public servant or the public servant who left office without notice, to a job that the fulfills its requirements, for the same salary (Article 139 of law no.50 of 2004).

**If so, how often are such prosecutions or court verdicts waived by Syrian courts in practice?**

36. Amnesty laws are issued almost each year in Syria and most of them exempt the perpetrators of the offense of leaving public office without notice from the sanction decided by article 364 Bis of the Penal Code, unless it is expressly excluded from the amnesty law. During the war many public servants left the public office despite they did not get approval and left the country. Syria faced a brain drain during the war and many qualified physicians, university teachers working for the public sector in Syria left the public office without permission and immigrated. It is very rare that the authorities give permission to leave office upon applying by the public servant. It is feared now that the number of public servants leaving office without notice and without permission will increase because of the economic meltdown in Syria and the sharp devaluation of the Syrian pound which is rendering the monthly salary of public servants in Syria, ridiculously low and to an unprecedented level.

**Is there a limitation period for prosecution of public sector employees for having left their position without notice? For instance, 3 or 5 years after they left their position?**

37. Yes, and we differentiate between two cases, the case when the criminal proceedings have not been started against the public servant for leaving office without notice and the case when a final criminal decision is issued against him/her but the sanction was not enforced.
38. The statute of limitation on the misdemeanor of living public office without notice is three years from the date of leaving office without notice. If no criminal proceedings have been initiated against the public servant within 3 years from the date of the commitment of the offense, the public right action is barred against the concerned public servant.
39. The Syrian Court of Cassation has decided in its ruling no.1 of 1972 case docket number 20, that the public rights criminal proceedings initiated on 16 October 1978 against the public servant who stopped going to work on 24 July 1973 and the public administration has considered him as resigned



on 13 June 1978, are barred because the offense of leaving office without notice has expired by prescription in accordance with article 438 of the Syrian Code of Criminal Procedures.

40. On the other hand, if the public servant has been sentenced by a final decision which was not enforced because the public servant is abroad or for any other reason, the statute of limitations on the misdemeanor of leaving office without notice is double the time of the sanction as decided by the Criminal Court, provided it is not more than ten years and not less than five years (Article 163/1 of the Syrian Penal Code). After the expiry of the statute of limitations, the sanction against the public servant who left office without notice, ceases to be enforceable.
41. If the judicial decision was issued in absentia against the public servant, the statute of limitations starts running on the enforcement of the sanction from the date of the notification of the decision to the public servant in person or to his place of residence.<sup>71</sup> If the public servant attended the trial, the statute of limitations on the sanction starts running from the date the criminal decision has become final (Articles 163/3).

### **Are public sector employees put on wanted lists?**

42. Yes, once the decision is issued against them by the First Instance Criminal Court and has become final either because it was issued in absentia and was not appealed or if it was appealed but confirmed by the Appellate Court and the Court of Cassation, the names of the convicted are recorded with the criminal police (Police Bulletin or Nashra Shourtieh) and are communicated as well to the Immigration and Passports Department to arrest them as soon as they return to Syria through any official borders post.

### **Can public sector employees apply for a “status settlement”, (taswiyat al-wada) with the Government of Syria, for leaving a public sector/civil servant position without notice?**

43. No, it is not possible namely when the public servant is prosecuted before the Criminal Court or is sentenced by it. However, according to article 139 of the Basic Regulation for Public Servants issued by law no.50 of 2004 as amended, the Chairman of the Council of Ministers may decide, based on the recommendation of the competent minister, to reinstate the public servant who resigned before his resignation was accepted and the public servant who left office without notice, and to pay him/her the same salary before leaving office. Moreover, in March 2019, the Syrian Council of Ministers allowed the reinstatement of public servants from besieged areas, who have not been sentenced by the Criminal Courts for the offense of article 364 Bis of the Penal Code, provided the resignation or leaving office without notice happened less than five years ago. The public servants from besieged areas were allowed to prove the besiegement period of their area by a police report

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<sup>71</sup> Please see above paragraphs 6 and 7. Criminal decisions are served on the convicted in the same way as the summon letters (i.e. to the place of residence of the convicted).

and the besiegement period is deducted from the five years window specified in the Council of Ministers decision (i.e., did not count).

**Does forgery of Syrian court verdicts, for leaving ones position without notice, occur among Syrians in or outside of Syria?**

44. Not often. Forging of official documents did happen during the war and still happening but more with respect to powers of attorney and other official documents related to fraudulent transfer/sale of property (i.e., without consent of the absentee owner). With respect to forging of courts verdicts related to the offense of leaving one's position is less reported inside Syria, but for Syrians who are outside Syria, it is happening because it allows Syrian citizens claiming asylum or similar status in the host country to prove potential prosecution in case of return to Syria and consequently prevent their repatriation to Syria.

## Annex II: Terms of reference

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1. Consequences of leaving a public sector/civil servant position without notice according Syrian law
2. Prevalence and scope of prosecution of public sector employees/civil servants who have left their positions without notice, and the outcome hereof
  - 2.1 e.g. are public sector employees/civil servants put on wanted lists
  - 2.2 Consequences for public sector employees/civil servants whose place of work is located in opposition-controlled areas, e.g. Kurdish controlled areas in northeast Syria or the Idlib area.
  - 2.3 Impact of leaving a public sector/civil servant position while the area was controlled by the opposition (possible mitigating or aggravating circumstances)
3. Procedures for issuance of summon letters and court verdicts, including involved authorities, templates used and the delivery or handing out of the documents etc.
4. Punishments meted out and factors impacting the punishment
5. Possibility of appealing verdicts for having left ones position without notice
6. Possibility of cancellation of court verdicts/prosecutions of public sector employees/civil servants for having left their positions without notice
  - 6.1. Prevalence of prosecutions or court verdicts being waived by Syrian courts in practice
7. Possibility of applying for “status settlement” with the GoS, for leaving a public sector/civil servant position without notice
8. Profile of prosecuted public sector employees/civil servants, including their field of work and rank, and possible distinction of convictions and verdicts issued to them according to their rank and position
9. Possible amnesties regarding public sector employees/civil servants leaving their positions without notice issued by GoS
10. The possible occurrence or existence of forgery Syrian court verdicts, for leaving ones position without notice
11. Possible consequences of leaving a public sector/civil servant position for one’s family members