

MOROCCO

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Legislative modifications in the course of 2014 are expected to liberalise the print media sector and wide the scope of press freedom, after a decade of stagnation. In Morocco, the press are governed by the dahir establishing the Moroccan Press Code of 27 November 1958. This instrument was extensively amended in 2003 and now faces long awaited change.



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Legal Framework for Press and Audio-Visual Communications in Morocco

1. Requirements for Press Publications

All newspapers or periodicals may be freely published in Morocco provided a statement to that effect is sent to the public prosecutor at the court of first instance of the place where the newspaper has its registered office.

The information which must accompany that statement includes the origin of the funds invested in the publication and the nationality of the owners of securities representing its capital stock. In addition, all of the owners, associates, shareholders, sponsors, funders and

other persons involved in the finances of publications released in Morocco must be Moroccan nationals. If a person lends his name in order to circumvent that obligation, by subscribing to the capital stock of a newspaper in the place of the real owner, he/she may be punished by imprisonment of between one month and one year and a fine of between MAD1,800 and fifty times the amount of the concealed subscription.

Foreigners are not totally barred from publishing in Morocco, as the law allows foreign newspapers to be printed, pub-

lished or established in Morocco provided that this is authorised by decree. According to the law, a newspaper is regarded as foreign if it was established or is published, in whole or in part, using foreign capital, or if it is managed by a foreigner.

The statement must lead to the issuance of an immediate provisional receipt and a definitive receipt within a maximum period of 30 days. If no receipt is issued, the newspaper may be published.

When each edition of the newspaper or periodical is published, four copies of that edition must be sent to the Ministry of Communication and two copies to the public prosecutor of the Court of first instance.

2. Foreign Funding of the Press

The Press Code prohibits Moroccan publications from receiving foreign funds. The direct or indirect receipt of funds or advantages from a government or a foreign party, except monies intended to pay for advertising, is punishable by imprisonment of between one and five years and a fine of between MAD20,000 and MAD100,000.

3. Foreign Newspapers

Under the Press Code, the publication, establishment or printing of a foreign newspaper or periodical must first be authorised by prime ministerial decree. Foreign newspapers or periodicals are defined as those managed by a foreigner or those established or published using foreign funds.

Furthermore, the entry of foreign newspapers or publications into Morocco may

be prohibited by decision of the Ministry of Communication if they undermine Islam, the monarchy, territorial integrity, respect for the King or public order.

The distribution or sale of publications in breach of such prohibition is punishable, for those responsible, by imprisonment of between six months and three years and a fine of between MAD1,200 and MAD50,000.

4. Access to Information for the Press

The Press Code guarantees the media access to information sources and enables the media to obtain information from various sources unless such information is confidential pursuant to the law.

This freedom is subject to the obligation to transmit the information honestly and accurately and to comply with constitutional principles and the ethical standards of the profession.

5. Penalties Applicable to the Content of Newspapers and Publications

5.1 Incitement to Commit Crimes and Offences

The Moroccan Press Code lays down severe penalties applying to the content of publications and newspapers in Morocco.

Accordingly, content which directly incites an individual to commit a crime or offence renders the person responsible for its publication and accomplice to that crime or offence.

If the crime or offence is directed against the internal security of the State, the

author of the publication which led to that crime or offence may be punished by imprisonment of between one and three years and a fine of between MAD5,000 and 100,000 MAD.

Moreover, incitement of racial discrimination, hatred or violence against individuals on account of their race, origin, colour or ethnic or religious background, or support for war crimes and crimes against humanity, is punishable - for the author of the publication - by imprisonment of between one month and one year and a fine of between MAD3,000 and MAD30,000.

Along the same lines, inciting military personnel or law enforcement officers to breach their duties and disobey their superiors is punishable by imprisonment of between two and five years and a fine of between MAD5,000 and MAD100,000.

5.2 Offences Against the State

Publications must not insult the King or the Princes and Princesses. The penalty for doing so is imprisonment of between three and five years and a fine of between MAD10,000 and MAD100,000. The same penalties apply to newspapers or publications which undermine Islam, the monarchy or territorial integrity. These penalties may be accompanied by the suspension of the newspaper or publication, or even its prohibition.

Similarly, the publication of false news, conjecture, inaccuracies or fabricated or falsified reports attributed to third parties, which disrupt public order or incite fear among the public, is punishable by imprisonment of between one month and one year and a fine of between

MAD1,200 and MAD100,000.

5.3 Offences against persons

The Moroccan Press Code also punishes defamation, which is defined as anything which undermines the honour or reputation of a person. In the case of a newspaper or publication, defamation is punishable by imprisonment of between one and six months and a fine of between MAD10,000 and MAD50,000.

5.4 Offences Against Foreign Politicians

The Press Code prohibits insults by the press directed at heads of State, heads of government and the foreign affairs Ministers of foreign countries. The applicable fine is between MAD10,000 and MAD100,000. Likewise, insults towards foreign diplomatic officials accredited to Morocco are punishable by imprisonment of between one and six months and a fine of between MAD5,000 and MAD30,000.

5.5 Affront to Public Decency

The dissemination of written or photographic material that is contrary to accepted principles of morality and public decency is also punishable under the Press Code. The applicable penalties are imprisonment of between one month and one year and a fine of between MAD1,200 and MAD6,000.

Likewise, the publication of announcements inciting depravity or the dissemination of speeches contrary to accepted principles of morality and public decency, or which incite depravity, attract the same penalties as those mentioned in the previous paragraph.

5.6 Publication of Judicial Information

The Press Code prohibits the publication of indictments and all other procedural documents concerning serious and minor offences prior to the relevant hearing in open court. The publication, disclosure or recreation of the circumstances of a crime or offence, such as murder, is also prohibited.

Furthermore, the law prohibits reporting on jury deliberations and on camera hearings.

6. Status of Professional Journalists

The status of professional journalists in Morocco is governed by a dahir of 02 August 1995 and by its implementing decree of 10 December 1996.

6.1 Press Card

All professional journalists practicing in Morocco are required to have a press card from the Ministry of Communication. One of the requirements in order to obtain a press card is that the applicant must have practiced journalism for at least two years. The card may be withdrawn at any time if the journalist has been found - pursuant to a final court decision - to have committed acts contrary to accepted principles of morality, to have infringed the Press Code or to have failed to comply with the ethical standards of the profession of journalism.

6.2 Status of Journalist

Moroccan journalists are not subject to general employment legislation but to specific provisions contained in the law governing them.

Thus, the termination of a journalist's employment contract differs from the general rules in that the period of prior notice is set at one month if the journalist has less than three years of service and at three months if the length of service exceeds three years.

Likewise, in the case of dismissal of a journalist, his/her severance pay may not be less than two months' salary for every year or fraction of a year of his/her length of service. If the journalist has more than five years of service, his/her severance pay is set by an arbitral committee.

Severance pay is also due in the following cases:

- Transfer of the press undertaking
- Cessation or closure of the publication
- Significant change in the nature of the press undertaking, if that change places the journalist in a position likely to adversely affect his/her moral interests or convict

6.3 Accredited Journalists in Morocco

Accredited journalists in Morocco are the correspondents of one or more foreign based press undertakings whose main activity is to act as correspondent. These journalists are required to practice their profession within the framework of respect for national sovereignty, the ethical standards of the professional and the law in general.

7. Audio-Visual Communications

Audio-visual communications in Morocco are governed by the Law of 03 February 2005. The dissemination of

audio-visual communications in Morocco is subject to the grant of a license issued by the High Authority for Audio-visual Communications (Haute Autorité de Communication Audiovisuelle or HACA). The issuance of that license is discretionary and is subject to compliance with a schedule of obligations drawn up by HACA.

The law makes provision for an authorisation system in the following cases:

- the dissemination of audio-visual broadcasts by the organisers of events of limited duration having cultural interest
- the establishment and operation - on an experimental basis - of audio-visual communication networks
- the distribution of audio-visual services based on conditional access by satellite by operators whose registered office is located outside of Morocco

The duration of the authorisation may not exceed two months.

The law lays out a reporting system for the establishment and operation of networks for the dissemination of audio-visual communication services both terrestrially and by satellite, making it possible for homes to facilitate collective reception in a residential property or group of properties.

The establishment of radio stations or private television channels is conditional upon HACA issuing a call for expression of interest. As of now, HACA has issued such a call for private radio stations

but has not yet done so for television channels.

HACA is responsible for monitoring all content broadcast by audio-visual communication means. To that end, all audio-visual programs must be recorded in their entirety and retained for at least one year.

The content of audio-visual communications must, in particular, comply with the following rules:

- Provide pluralistic and accurate information
- Promote artistic creativity in Morocco
- Report events objectively and neutrally and refrain from favouring a particular political party, ideology or doctrine
- Refrain from undermining the beliefs of the Kingdom of Morocco, particularly those relating to Islam, territorial integrity and the monarchy
- Refrain from undermining accepted principles of morality. Audio-visual operators are also required to broadcast urgent messages intended to safeguard public order as well as certain official statements

BIOGRAPHY

Jaàfar Laidi holds a Maîtrise en Droit Privé from Hassan II University (Casablanca) and a Diplôme d'Études Supérieures Spécialisées in International Business Law from the University of Nice Sophia-Antipolis (France). He is

qualified as a lawyer in Morocco. In 2001 he joined the Arthur Andersen Casablanca office, which merged into Ernst & Young in 2004. He was promoted to manager in Ernst & Young in 2005. He has focused his career on Corporate, Real Estate and Labour Law. He has also worked on projects concerning the public sector (administrative concessions, tourism development projects, etc.). He speaks fluently Arabic, English, French and Spanish. Since 2005 he is a legal manager for the Garrigues office in Casablanca.