

Introduction to the Moroccan Legal System

1. Introduction

Morocco is a constitutional, democratic, parliamentary and social monarchy. It is bounded to the west by the Atlantic Ocean (2,934 km of coasts), in the north by the Straits of Gibraltar and the Mediterranean (512 km of coasts) and is separated from the European continent by only 14 km of sea. It has common terrestrial borders with Algeria (1,350 km), Mauritania (650 km) and Spain (12 km) (Ceuta and Melilla). The native people of Morocco are an ancient race called the Berbers. After 44 years as a French protectorate, Morocco attained independence in 1956.

Since independence, Moroccan law has been shaped by French Civil Law and a combination of Muslim and Jewish traditions. The Constitution of Morocco has also played a pivotal role in shaping the law and legal system in Morocco. The most recent constitutional developments took place following the ‘Arab Spring.’ Following this uprising, Morocco drafted and adopted a new constitution in July 2011. The Moroccan political and constitutional context represents an interesting situation in that it has a reigning monarch that has been in power for more than three centuries.

There are a number of languages of Morocco. The two official languages are Modern Standard Arabic and Amazigh (Berber).^[4] Moroccan Arabic (known as Darija) is the spoken native vernacular. The languages of prestige in Morocco are Arabic in its Classical and Modern Standard Forms and French, the latter of which serves as a second language for many Moroccans.

2. The Executive

The Government is composed of the Prime Minister and ministers. The king presides over the Council of Ministers, composed of the head of government and of ministers. The government is accountable to the king and the parliament.

The Prime Minister

The king appoints the head of government from within the political party arriving ahead in the elections of the members of the Chamber of Representatives, and with a view to their results. The country's new constitution of 2011 strengthened the authority of the country's prime minister, allowing him or her to appoint to appoint government officials and dissolve parliament. After the appointment of the cabinet members by the Prime Minister, he submits the program (about national activity, namely in economic, social, cultural and foreign affairs) to each one of the two houses of parliament. At the House of Representatives, the program must be put to the vote.

Under the prime minister's responsibility, the government ensures the execution of the laws. All public facilities are placed at the government's disposal.

The prime minister has the right to introduce bills, exercise the administrative powers and delegate some of his powers to the ministers. The prime minister is responsible for the co-ordination of ministerial activities. The Council of Ministers deliberates on the following questions and texts:

- The strategic orientations of the policy of the state;
- The bills of revision of the constitution;
- The bills of organic laws;
- The general orientations of the bill of the law of finance;
- The bills of framework law provided for by Article 71 of the Constitution;
- The bills of law of amnesty;
- The bills of texts relative to the military domain;
- The declaration of the state of siege;
- The declaration of war;
- The bills of decree provided for by article 104 of the constitution.

Before any relevant decision is taken, the Cabinet is notified of the following:

- matters related to general policies of the state;
- declarations of martial law;
- declarations of war;
- requesting confidence from the House of Representatives to allow the government to carry out their responsibilities further;
- draft bills, before they are brought to one of the two houses;

- statutory decrees;
- draft plans;
- projects for revising this Constitution.

3. The Legislative Power: Parliament

Parliament exercises the legislative power. It votes on the laws, controls the action of the government, and evaluates the public policies. The parliament is composed of two Chambers: The Chamber of Representatives and the Chamber of Counselors. The members of the Chamber of Representatives are elected for five years by universal direct suffrage. The members of the Chamber of the House of Counselors are elected for six years by indirect universal suffrage.

The king presides over the opening sessions of parliament, which hold its meetings during two sessions every year. The first session begins on the second Thursday in October and the second session begins on the second Thursday in April. The parliament may be convened in extraordinary situations by:

- demand of one-third of the members of the Chamber of Representatives or of the majority of those of the Chamber of Counselors;
- by decree;
- or by the majority of the Chamber of Counselors

Members of parliament may not be arrested in the exercise of their functions, except in cases where the opinion expressed challenges the monarchic form of the state, the Muslim religion or constitutes an infringement on the due respect for the king.

4. The Judicial System

Morocco's constitution under Article 82 proclaims that "the judicial authority is independent from the legislative power and the executive power". The king is the guarantor of the independence of the judicial power. Courts in Morocco are regulated by the Decree-Law of 15 July 1974 on the organization of the courts as amended and modified.

The Judiciary is divided into three principle types of courts which are:

- General jurisdiction courts
- Specialized jurisdiction courts
- Special courts

Ultimate power of review lies with the Supreme Court. The following are other courts:

- Court of Cassation (formerly the Supreme Council),
- the appeal courts,
- the courts of first instance,
- the Standing Tribunal of the Royal Armed Forces, the administrative courts,
- Neighborhood courts (formerly community and district courts)

4.1. Specialized Jurisdiction Courts

There are 7 administrative tribunals established by a 1991 law. Administrative courts are widely held respected. There are plans to establish administrative appeal courts. Appeals are currently filed with the administrative division of the Supreme Court. There is an independent system of audit courts at the central and regional levels. They are considered so important in the institutional structure of the judiciary that an entire title of the Constitution is devoted to them. There are eight commercial courts and three commercial appeals courts which were created in 1997. These courts hear commercial cases where the amount in controversy is in excess of 20,000 Dirhams and the dispute concerns commercial contracts, commercial paper or commercial goods. Commercial courts supervise the operations of the commercial registry, which is composed of local registries attached to local courts and a central registry under the authority of the Ministry of Trade. Their objective is to register all persons engaging in trade.

4.2. Supreme Court

The Supreme Court is the highest appellate court in Morocco. The court has six specialized divisions, which are each divided into sections. A panel of at least five justices hears cases. For important cases, it may sit en banc. The Supreme Court is a court of cassation, which means it hears appeals only on issues of law. When a petition is granted and ruled on, the case is referred back to an appeal court to decide on questions of both fact and law. The court also reviews cases of abuse of discretionary power in decision-making by regulatory or administrative tribunals, the prime minister, or other

administrative authorities where such decisions concern more than one administrative court's territorial jurisdiction. The Supreme Court decides approximately 40,000 cases a year.

4.3. Jurisdictions of the 2nd Degree: The Courts of Appeals

They are composed of a president, judges, prosecutors and the clerk of the court, and consider appeals in cases for which the first instance courts have jurisdiction and appeals concerning orders issued by the presidents of those courts. Through their first instance chambers, they also consider felonies, and hear appeals concerning the decisions of investigating judges and others.

4.4. Court of Cassation (Replaced the Supreme Council)

The Court of Cassation replaced the Supreme Council. It was established by Act No. 58/11, promulgated under Royal Decree 1.11.170 of 25 October 2011, amending Royal Decree No. 1.57.223 of 27 September 1967 on the Supreme Council. It is composed of a first president, chambers, the prosecutor-general, assistant prosecutors and the clerk of the court.

The court of cassation is competent for:

- appeals for cassation of sentences without appeal decided by anyone in the kingdom's courts;
- appeals for cancellation of the Prime Minister's decisions;
- jurisdiction disputes arising among courts above which there is no high court other than the Supreme Court;
- suits for bias filed against magistrates and courts with the exception of the Supreme Court;
- proceedings aimed at judge disqualification because of likelihood of bias;
- disqualifications for reasons of public security or for the sake of a good administration of justice.

4.5. Administrative Courts

Administrative courts are competent to make initial rulings on:

- claims for cancellation of acts filed against administrative authorities;
- disputes related to administrative contracts;
- claims for compensation of prejudice caused by public entities' acts or activities;
- to set up the consistency of administrative acts with legal provisions.

4.5.1. Administrative Courts of Appeal

The administrative courts of appeals were established under Act No. 80-03 in 2007 and are composed of a first president, the presidents of the chambers, councilors, the royal commissioner to uphold the law, and the clerk of the court. It is competent to hear appeals concerning judgments of the administrative courts and the orders of their presidents.

4.6. The Standing Military Tribunal of the Royal Armed Forces

It is competent for cases for:

- crimes committed by members of the military under the Military Justice Act;
- crimes under the Criminal Code;
- crimes committed by civilians against members of the Royal Armed Forces or against the external security of the country.

5. Other Authorities

5.1. The Constitutional Council

The Constitutional Council exercises the powers vested in it under the constitution and the provisions of the act establishing the council, pending the establishment of the Constitutional Court provided for in the current 2011 Constitution.

The Constitutional Council is made up of six members appointed by the king for a nine-year period. Six other members are appointed for the same period, half of them by the president of the House of Representatives and the other half by the President of the House of Counselors. A third of each category of members is renewed every three years. Before their promulgation, organic law and the Rules of Procedure of each house are submitted to the Constitutional Council. Further, it examines the validity of the election of Members of Parliament, referendums, and the constitutionality of regulatory laws and ordinary law.

The king, the prime minister, the president of the House of Representatives, the president of the House of Counselors or one-fourth of the members making up one house or the other can refer to the Constitutional Council before promulgation of the law. The Constitutional Council has one month to decide upon the special instances. In case of emergency, the deadline is reduced to eight days if so requested by the government. Decisions of the Constitutional

Council are imposed upon all public authorities, administrative and judicial. No unconstitutional provisions are promulgated or implemented.

5.2. The Economic and Social Council

The Economic and Social Council was officially inaugurated in 2011. It may be consulted by the government, as well as the House of Representatives and the House of Counselors on all matters of economic or social nature. It shall give its opinion on the general guidelines pertaining to the national economy and training programs.

6. Administrative Setup

The administration in the kingdom is organized by two assemblies: local communities and local assemblies. The assemblies have the following competences:

- determination of modes and mechanisms for the collection of duties and taxes destined for the prefecture or the province Regional development programs;
- industrial decentralization projects;
- rules of establishment for provincial and prefectural public services;
- the classification, maintenance and extension of roads.

Other Important institutions:

- The Inter-ministerial Unit on Human Rights (2011)
- The National Human Rights Council, which replaced the consultative council on human rights
- Office of the Ombudsman (established in March 2011-National UPR Report)
- The High Authority for Audio-Visual Communication
- The Higher Council for Education
- The Central Anti-Corruption Authority and the Competition Council
- The Royal Institute of Amazigh Culture
- The Royal Advisory Council for Saharan Affairs
- The National Observatory for Human Development
- The National Commission for the Control and Protection of Personal Data
- The National Commission on International Humanitarian law
- Equity and Reconciliation Commission