



**Ministry of Immigration
and Integration**

The Danish
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Morocco

Risk of Double Jeopardy in Morocco

Report based on interviews in Morocco 9 to 18 October 2016

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Disclaimer

This report was written according to the European Asylum Support Office (EASO) Country of Origin Information report methodology.¹ The report is based on approved notes from meetings with carefully selected sources. Statements from all sources are used in the report, and all statements are referenced.

This report is not, and does not purport to be, a detailed or comprehensive survey of all aspects of the issues addressed in the report. It should be weighed against other available country of origin information on the risk of double jeopardy in Morocco. The report does not include policy recommendations or analysis. The information in the report does not necessarily reflect the opinion of the Danish Immigration Service (DIS).

Furthermore, this 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.

¹ European Union: European Asylum Support Office (EASO), EASO Country of Origin Information report methodology, 10 July 2012. Available at <http://www.refworld.org/docid/4ffc33d32.html>

Methodology

This report is based on interviews with sources in Morocco conducted by the Country of Origin Information Division, Danish Immigration Service (DIS) in Rabat, from 9 - 18 October 2016. The purpose of the mission was to collect up to date information on issues recurring in cases regarding Moroccan citizens in Denmark with regard to the situation of unaccompanied minors, the situation of LGBT people and double jeopardy. The findings regarding unaccompanied minors and Lesbian, Gay, Bisexual and Transgender (LGBT) people are reported in separate reports.

The present report focuses on the risk of double jeopardy in Morocco, including the legislative framework.

The terms of reference for the mission were drawn up by DIS in consultation with the Danish Refugee Appeals Board as well as a Danish advisory group on Country of Origin Information (COI).² The terms of reference are included at Appendix D to this report.

In the process of compiling the report, the delegation interviewed four sources, comprising representatives from the Moroccan authorities, a liaison judge and a legal adviser. The Danish Embassy in Rabat provided valuable assistance in identifying some of the interlocutors relevant to the terms of reference. The Danish Embassy also provided logistical assistance during the mission. The sources interviewed were selected by the delegation based on their expertise, merit and experience relevant to the mission.

The sources consulted during the mission to Morocco are listed in Appendix C. The interviews were conducted in either French or English according to the convenience of the interlocutors. Meeting notes, originally recorded in French, have been translated into English. All the notes of meetings are provided in English in Appendix A. Notes for those interviews which were originally conducted in French are provided in Appendix B.

The interlocutors were asked how they wished to be introduced and quoted, and all sources are introduced and quoted according to their own wishes. Three sources are referred to by their name and/or the name of their organisation; in accordance with their own request on this matter. One source, the representative from the Ministry of Justice and Liberties, requested not to be mentioned by name and one source, a well informed legal adviser in Rabat, asked to be anonymous.

The sources consulted were informed about the purpose of the mission and the fact that their statements would be included in a report, to be made publically available.

The meeting notes were validated by the sources. All notes were forwarded to the interlocutors for their approval and amendment, allowing the opportunity to offer corrections or make comment on their statements. All sources but the Ministry of Foreign Affairs and Cooperation approved their statements. This source was contacted by email and informed that the delegation would include the note in the report if no

² The group consists of Danish Refugee Council, Amnesty International in Denmark, Danish Institute for Human Rights, Dignity, representatives of two Christian organisations (Danish European Mission and Open Doors), the National Commissioner of Police and the Danish Bar and Law Society (representing asylum lawyers).

response was received by the deadline. The delegation never received any response.

The report is a synthesis of the sources' statements and does not include all details from the meeting notes. In the report, care has been taken to present the views of the interlocutors as accurately and transparently as possible, and reference is made by number to the specific paragraphs in the meeting notes, in foot notes in the report. All sources' approved statements are found in their full extent in Appendix A and B of this report.

The report was finalised in February 2017.

The report is available on the websites of DIS, www.newtodenmark.dk and thus is available to all stakeholders in the refugee status determination process as well as to the general public.

1. Legislation on the principle of double jeopardy

In the national legislation the principle of double jeopardy (*non bis in idem/ne bis in idem*) is laid down in the Moroccan Code of Penal Procedure, Act no. 22-01 enacted by dahir [*decree*] no. 1.02.155 on 3rd October 2002³, Sections 704 to 749 in the Chapter about international cooperation.⁴ An anonymous well informed legal adviser in Rabat and the Liaison Judge at the Embassy of Spain both stated that the principal of *non bis in idem* is stipulated in the Code of Penal Procedure, article 707.⁵

International legislation ratified by Morocco, according to which no one can be prosecuted or punished twice for the same violation in the country of origin or abroad (double jeopardy), is stipulated in the Palermo Convention.⁶

2. Risk of double jeopardy

All sources confirmed that Morocco respects the principle of *non bis in idem*.⁷ The well informed legal adviser noted, however, that it may be that Morocco has information about other matters that would allow a prosecution. The same source further elaborated that if a terrorist was expelled from a foreign country, he would be monitored closely by the Moroccan security service. He would not be prosecuted and punished for terrorism. However, the Moroccan authorities might know of other violations committed by the person in question for which he would be sentenced.⁸ Concerning extradited Moroccan citizens who were convicted of terrorism it is in no way a rule that they will be prosecuted and convicted for other violations.⁹

According to the Ministry of Justice and Liberties, the consequence for a Moroccan who has committed an offence abroad, but who has not been punished and who subsequently returns to Morocco is that he or she will be punished pursuant to the Code of Penal Procedure.¹⁰

The consequence for a Moroccan who has been punished for an offence abroad, but who has not served his or her sentence and who returns to Morocco is that he or she will be punished pursuant to the Code of Penal Procedure.¹¹ The Liaison Judge at the Embassy of Spain added that in case a sentence was given but not served entirely, the person can be sentenced in Morocco.¹²

³ Arabic version of the Code of Penal Procedure available on the website of the Ministry of Justice and Liberties: <http://adala.justice.gov.ma/production/html/Ar/38578.htm>

There is no official version in French of the Moroccan Code of Penal Procedure on the internet. The Ministry of Justice and Liberties has shared copies of the relevant sections in a French version of the Administration of Criminal Justice Act by a prosecutor in Morocco. See Appendix E.

⁴ Ministry of Justice and Liberties: 4

⁵ Embassy of Spain: 10, A well informed legal adviser in Rabat: 25. See article in Appendix E.

⁶ A well informed legal adviser in Rabat: 27, Ministry of Justice and Liberties: 4, Embassy of Spain: 11

⁷ Ministry of Foreign Affairs and Cooperation: 3, Ministry of Justice and Liberties: 7, Embassy of Spain: 12, A well informed legal adviser in Rabat: 16

⁸ A well informed legal adviser in Rabat: 16-17

⁹ A well informed legal adviser in Rabat: 18

¹⁰ Ministry of Justice and Liberties: 5

¹¹ Ministry of Justice and Liberties: 6, Embassy of Spain: 12

¹² Embassy of Spain: 12

No examples of violation of the principle of non bis in idem were known to the Liaison Judge at the Embassy of Spain.¹³

3. Monitoring

According to the Ministry of Justice and Liberties, in cases where a Moroccan national has been sentenced for an offence related to terrorism abroad and who is expelled to Morocco for that reason, the person in question will be monitored by the relevant authorities.¹⁴

A well informed legal adviser commented that few things remain undisclosed in Morocco as the security service is highly efficient. Many ordinary people, including the neighbourhood guards (*concierges du quartier*) provide information to the security service about their neighbours on a voluntary basis. However, there is no 'surveillance psychosis'.¹⁵

4. Corruption

According to a well informed legal adviser in Rabat, the level of corruption is high in Morocco. This phenomenon has been admitted by the authorities and it has been addressed by His Majesty King Mohammed VI. According to unofficial sources approximately 60 percent of the Moroccan magistrates would be suspected to be corrupt. According to the country official sources 30 percent of the Moroccan police force is suspected to be involved in corruptive practices.¹⁶

¹³ Embassy of Spain: 7

¹⁴ Ministry of Justice and Liberties: 8

¹⁵ A well informed legal adviser in Rabat: 22

¹⁶ A well informed legal adviser in Rabat: 20

Appendix A: Meeting notes in English

1. Ministry of Foreign Affairs and Cooperation

Interview with Mustapha El Bouazaoui, Consular and Social Affairs

10 October 2016, Rabat

1. The conversation with Mustapha El Bouazaoui began with a survey of the socio-political situation in the Moroccan society. The Director of the Department of Consular and Social Affairs gave a statement about the three issues submitted by the Danish Mission in the following order: the situation of unaccompanied minors, the situation of LGBT persons and double punishment. He emphasized the need for subsequent consulting the ministries and associations specializing in each field in order to provide further information.

The “non bis in idem” doctrine

2. According to the criminal procedure principle of “non bis in idem”, nobody may be prosecuted or convicted twice for the same offence whether the offence was committed in Morocco or abroad.
3. The non bis in idem principle is recognized by the Moroccan Government.

2. The Ministry of Justice and Liberties

Interview with a representative from the Department of Criminal Cases and Pardon

Rabat, 17 October 2016

The principle of *non bis in idem* [double jeopardy]

4. In the national legislation the principle of *non bis in idem* is laid down in the Moroccan Code of Penal Procedure, Act no. 22-01 enacted by dahir [*decree*] no. 1.02.155 on 3rd October 2002¹⁷, Sections 704 to 749 in the Chapter about international cooperation. As to international legislation, Morocco has signed bilateral conventions with other countries. Morocco and Denmark has not signed any bilateral convention, however, an extradition may take place through Interpol. Morocco has ratified the Palermo Convention, which among other issues deals with the principle of *non bis in idem*.
5. The consequence for a Moroccan who has committed an offence abroad, but who has not been punished and who subsequently returns to Morocco is that he or she will be punished pursuant to the Code of Penal Procedure.

¹⁷ Arabic version of the Code of Penal Procedure available on the website of the Ministry of Justice and Liberties: <http://adala.justice.gov.ma/production/html/Ar/38578.htm>

There is no official version in French of the Moroccan Code of Penal Procedure on the internet. The Ministry of Justice and Liberties has shared copies of the relevant sections in a French version of the Administration of Criminal Justice Act by a prosecutor in Morocco. See Appendix E.

6. The consequence for a Moroccan who has been punished for an offence abroad, but who has not served his or her sentence and who returns to Morocco is that he or she will be punished pursuant to the Code of Penal Procedure.
7. Morocco respects the principle of *non bis in idem*.
8. In cases where a Moroccan national has been sentenced for an offence related to terrorism abroad and who is expelled to Morocco for that reason, the person in question will be surveilled by the relevant authorities.

3. Embassy of Spain, Morocco

Interview with Luis Francisco de Jorge Mesas, Adviser on Legal Cooperation, Liaison Judge at the Embassy of Spain

Rabat, 13 October 2016

The principal of *ne bis in idem*

9. The rule of *ne bis in idem* is a juridical principal in the criminal law according to which no one can be prosecuted or punished twice for the same violation in the country of origin or abroad.
10. In the Moroccan national legislation the principal of *ne bis in idem* is stipulated in the *Code Procedure Pénale*¹⁸, article 707. Reference is made to other relevant articles in the Code de Procedure Penal, articles 708, 709 and 711.
11. The principal of *ne bis in idem* is stipulated in bilateral agreements as well as in the Palermo Convention and conventions of terrorism. Morocco ratified these conventions.
12. A Moroccan citizen who committed a crime abroad and who has served the given sentence would not be prosecuted in Morocco. In case the person did not serve the sentence or did not serve it entirely, the person can be sentenced in Morocco.
13. No examples on cases of violation of the principle of *ne bis in idem* were known to the source.
14. With regard to prevention of terrorism the cooperation between Spain and Morocco works well. In cases related to prevention of terrorism it is often seen that terror cells in for instance Spain are suspected to be connected to terror cells in Morocco. The two countries make joint operations in which the persons taken under arrest will be prosecuted in the country where they were arrested. Case files of the defendants are exchanged between the two countries.

¹⁸ Dahir 1.02.255 du 25 rajab 1423 (3 octobre 2002), portant promulgation de la Loi n° 22.01 formant le code de Procédure Pénale

4. A well informed legal adviser in Rabat

Rabat, 14 October 2016

The principal of *ne bis in idem*

15. The rule of *ne bis in idem* is a juridical principal in the criminal law according to which no one can be prosecuted or punished twice for the same violation in the country of origin or abroad.
16. Morocco respects the principal of *ne bis in idem*. However, it may be that Morocco has information about other matters that would allow a prosecution, in this particularly efficient operation of the intelligence service in Morocco.
17. If a terrorist was expelled from a foreign country, he would be monitored closely by the Moroccan security service. He would not be prosecuted and punished for terrorism. However, the Moroccan authorities might know of other violations committed by the person in question for which he would be sentenced.
18. The well informed legal advisor added that concerning extradited Moroccan citizens who were convicted of terrorism it is in no way a rule that they will be prosecuted and convicted for other violations.

Education and salary of judges in Morocco

19. A Moroccan judge must at first have a three year diploma from a faculty of law. Secondly, they must pass a contest that takes two years to prepare for in order to become a judge. The earning of a young Moroccan magistrate is approximately 900€ per month. A senior magistrate end of career earns 3,500-4,000€ per month. There is no formal specialization for judges working with cases of minors.
20. The level of corruption is high in Morocco. This phenomenon has been admitted by the authorities and it has been addressed by His Majesty King Mohammed VI. According to unofficial sources approximately 60 percent of the magistrates would be suspected to be corrupt. According to the country official sources 30 percent of the police force is suspected to be involved in corruptive practices.
21. With regard to terror cases, it is likely that a defendant will be judged based on confessions or on remorse. Some defendants will get the choice between repenting the violation and get approximately four years of prison time or get a prison sentence of for instance 12 years.

Level of surveillance of people in general in Morocco

22. Few things remain undisclosed in Morocco as the security service is highly efficient. Many ordinary people, including the neighbourhood guards (*concierges du quartier*) provide information to the security service about their neighbours on a voluntary basis. However, there is no 'surveillance

psychosis'. The interlocutor added that there is a certain level of humanity in Morocco which is expressed in the fact that the level of torture is lower than under the previous regime.

23. The well informed legal adviser said that today in Morocco, there is a real preoccupation to detect and to prevent any violations of human rights. The interlocutor added that the human rights situation is not perfect and there are probably still violations. However, the interlocutor could not point out any concrete example of such violations.

Ne bis in idem: legislation

24. The Moroccan national legislation according to which no one can be prosecuted or punished twice for the same violation in the country of origin or abroad (*ne bis in idem*) is stipulated in the *Code de Procedure Pénale*, article 707.

25. Article 707 reads as follows

“any infringement qualified as a crime under Moroccan law perpetrated by a Moroccan citizen abroad can be prosecuted and sentenced in Morocco. Therefore two conditions must exist:

- *There must be a foreign prosecution file or a foreign sentence.*
- *The person has not undergone the judgement”*

26. In any case, the foreign country must officially notify the prosecution file and/or the sentence to the Moroccan authorities. This must be done according to bilateral treaty.

27. International legislation ratified by Morocco according to which no one can be prosecuted or punished twice for the same violation in the country of origin or abroad (*ne bis in idem*) is stipulated in the Palermo Convention.

Appendix B: Meeting notes in French

1. Ministères des Affaires Etrangères et de la Coopération

Entretien avec Mustapha El Bouzaoui, Affaires Consulaires et Sociales

10 octobre 2016, Rabat

1. L'entretien avec Mustapha El Baouzaoui a commencé avec un tour d'horizon de la situation socio-politique de la société marocaine. Le Directeur des Affaires Consulaires et Sociales s'est exprimé sur les trois thèmes de la mission danoise dans l'ordre suivant : la situation des mineurs non-accompagnés, la situation des personnes d'orientation LGBT et la double peine. Il a souligné le besoin de consulter par la suite les ministères et les associations spécialisées dans chaque domaine pour plus de renseignements.

'Non bis in idem'

2. Selon le principe de la procédure pénale de 'non bis in idem' nul ne peut être poursuivi ou puni pénalement deux fois à raison des mêmes faits, que les faits soient commis au Maroc ou à l'étranger
3. Le principe de non bis in idem est reconnu par le Gouvernement du Maroc.

2. Ministère de Justice et des Libertés du Maroc

Entretien avec un représentant des Affaires Pénales et des Grâces

Rabat, le 17 octobre 2016

Le principe de *non bis in idem*

4. Dans la législation nationale le principe de *non bis in idem* est stipulé dans le Code de Procédure Pénale Marocain, la loi 22-01 promulguée par le dahir no 1.02.155 du 3 octobre 2002¹⁹ de l'article 704 à 749, dans le chapitre sur coopération internationale. En ce qui concerne la législation internationale, Maroc a signé des conventions bilatérales avec d'autres pays. Entre le Maroc et le Danemark il n'y a pas de convention bilatérale mais une extradition peut se faire à travers Interpol. Le Maroc a ratifié la Convention de Palerme qui traite parmi d'autres sujets du principe *non bis in idem*.
5. La conséquence pour un marocain qui a commis un crime à l'étranger mais qui n'était pas puni et qui rentre par la suite au Maroc est qu'il va être puni selon le Code de procédure pénale.

¹⁹ Il n'existe pas une version officielle en français du Code de Procédure Pénale Marocain accessible sur l'internet. Le Ministère de Justice et des Libertés a fait part des copies des articles pertinentes d'une version en français du Code de Procédure Pénale faite par un procureur au Maroc.

6. La conséquence pour un marocain qui a été puni pour un crime à l'étranger mais qui n'a pas purgé sa peine et qui rentre au Maroc est qu'il va être puni selon le Code de procédure pénale.
7. Le Maroc respecte le principe de *non bis in idem*.
8. Au cas où un citoyen marocain qui a été condamné pour des crimes liés au terrorisme à l'étranger et qui pour cette raison sera expulsé au Maroc, ce citoyen va être surveillé par l'autorité compétente à cela.

Appendix C: Sources consulted

1. Ministry of Foreign Affairs and Cooperation, Mustapha El Bouazaoui, Consular and Social Affairs
2. The Ministry of Justice and Liberties, a representative from the Department of Criminal Cases and Pardon
3. Embassy of Spain, Morocco, Luis Francisco de Jorge Mesas, Adviser on Legal Cooperation, Liaison Judge at the Embassy of Spain
4. A well informed legal adviser in Rabat

Appendix D: Terms of Reference

DOUBLE JEOPARDY

- a. Does Moroccan law allow for double jeopardy?
 - i. Will a Moroccan citizen who has committed a criminal act abroad and has been subject to punishment abroad, be sentenced to punishment for the same criminal act once he or she returns to Morocco?
 - ii. Do the same rules apply, regardless of the nature of the crime?
 - iii. Are there any recent examples of the application of double jeopardy in Morocco?
 - iv. In case a Moroccan citizen who was sentenced abroad of terror related crime and thereafter expelled to Morocco, to what extent will the authorities monitor the person in question?

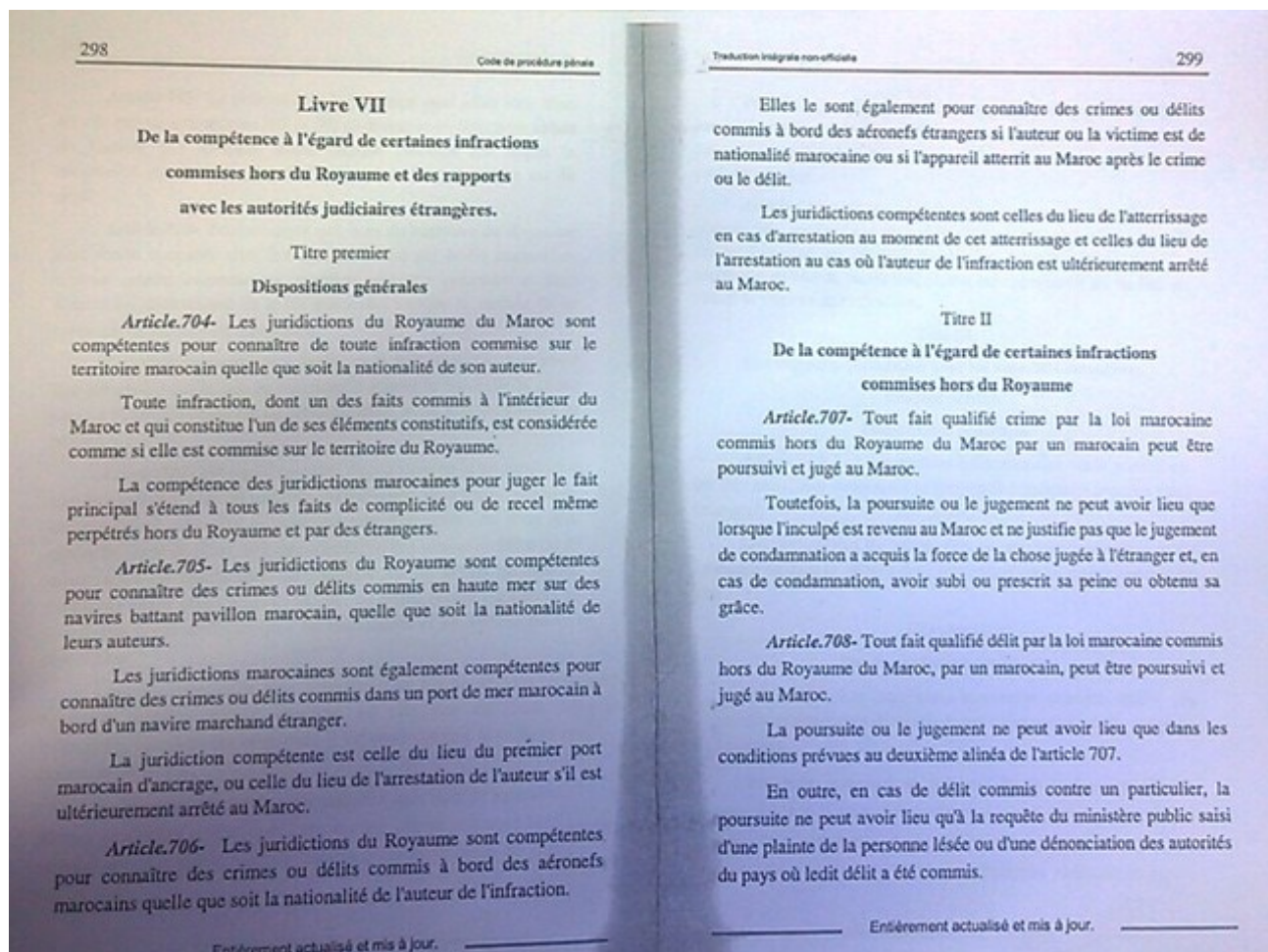
Appendix E: Excerpt of Moroccan Code of Penal Procedure

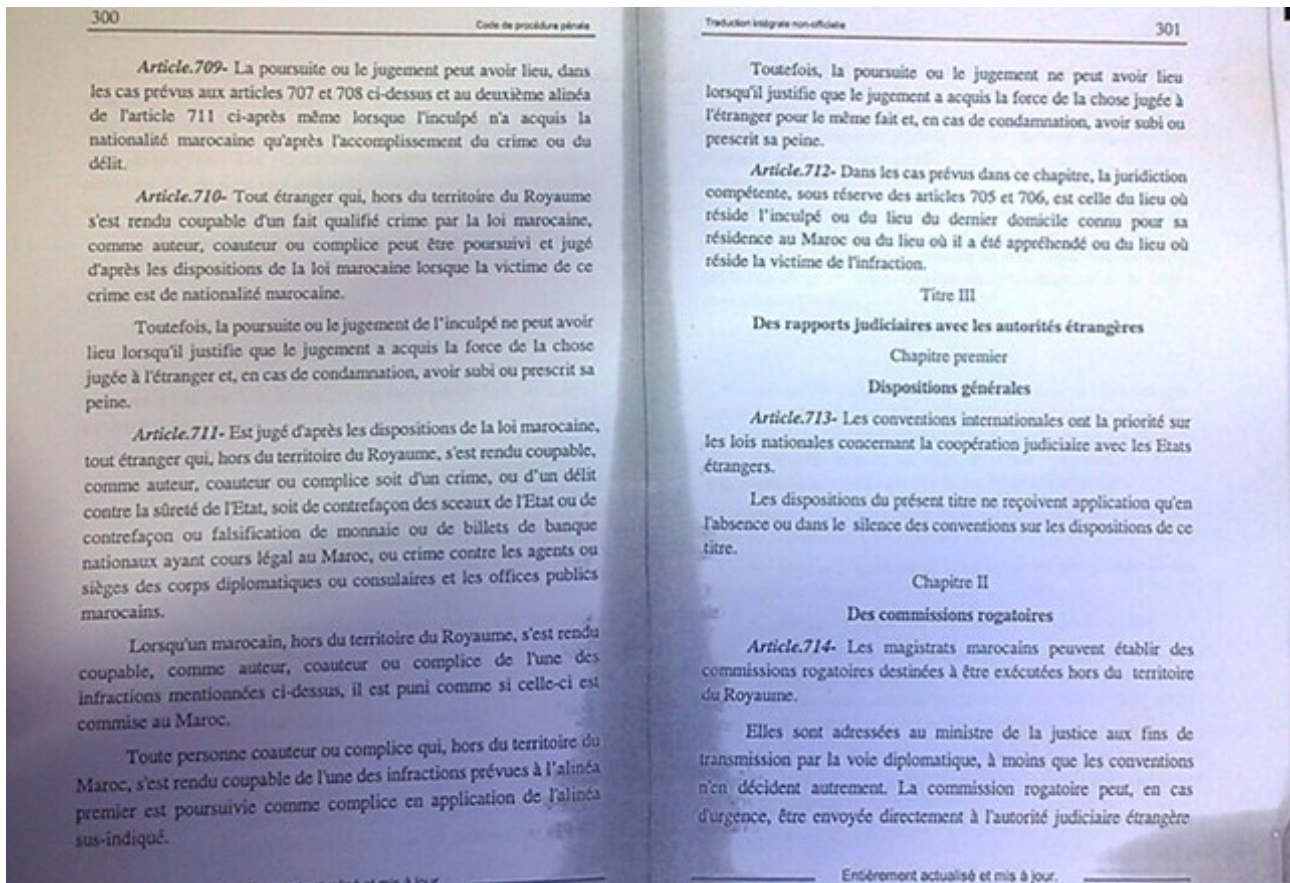
Moroccan Code of Penal Procedure Act no. 22-01 enacted by dahir [*decree*] no. 1.02.155 on 3rd October 2002, articles 707 to 711.

There is no official version in French of the Moroccan Code of Penal Procedure on the internet. The Ministry of Justice and Liberties has shared copies of the relevant sections in a French version of the Administration of Criminal Justice Act by a prosecutor in Morocco. Arabic version of the Code of Penal Procedure available on the website of the Ministry of Justice and Liberties:

<http://adala.justice.gov.ma/production/html/Ar/38578.htm>

French version





English translation:

Code of Criminal Procedure

Chapter II

Competence in relation to certain offences committed outside the Kingdom

Article 707. Any acts classified under Moroccan law as a crime committed outside the Kingdom of Morocco by a Moroccan may be prosecuted and tried in Morocco.

However, the prosecution or trial may only take place after the person, who has been charged, has returned to Morocco and does not substantiate that the sentence has acquired the force of *res judicata* abroad, and, in the case of a conviction, that the person has served his or her sentence or the sentence is statute-barred or the person has been granted a pardon.

Article 708. Any acts classified under Moroccan law as an offence committed outside the Kingdom of Morocco by a Moroccan may be prosecuted and tried in Morocco.

The prosecution or trial may only take place under conditions laid down in Article 707(2).

Moreover, in case of an offence committed against a private person, the prosecution may only take place at the instance of the Prosecution based on a complaint lodged by the injured party or information by the authorities of the country where the offence in question has been committed.

Article 709. The prosecution or trial may take place in cases laid down in articles 707 and 708 above and in article 711(2) below even when the person who has been charged has only acquired Moroccan citizenship after having committed the crime or the offence.

Article 710. Any aliens who have been found guilty outside the territory of the Kingdom of Morocco in an act classified as a crime pursuant to Moroccan law as a principal, an accessory or an accomplice may be prosecuted and tried pursuant to the provisions of Moroccan law when the victim of this crime is a Moroccan national.

However, the prosecution or trial of the person who is charged cannot take place when the person substantiates that the sentence has acquired the force of *res judicata* abroad, and, in the case of a conviction, that the person has served his or her sentence, or the sentence is statute-barred.

Article 711. Any alien will be tried pursuant to the provisions of Moroccan law provided that he or she has been found guilty outside the territory of the Kingdom as a principal, an accessory or an accomplice either of a crime or an offence against the security of the State, i.e. counterfeiting of the seals of the State or counterfeiting or falsification of national coins or bank notes which are legal tender in Morocco, or a crime against Moroccan employees or headquarters of diplomatic or consular corps and public offices.

When a Moroccan has been found guilty outside the territory of the Kingdom as a principal, an accessory or an accomplice of one of the infringements of the law above, he or she will be punished as if the infringement of the law has been committed in Morocco.

Any accessory or accomplice who has been found guilty outside the territory of Morocco of one of the infringements of the law laid down in subsection 1 will be prosecuted as an accomplice pursuant to the above-mentioned subsection.

However, the prosecution or trial cannot take place when the person substantiates that the sentence has acquired the force of *res judicata* abroad for the same act, and, in the case of a conviction, that the person has served his or her sentence, or the sentence is statute-barred.