

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

Index: MDE 29/2260/2015
17 August 2015

Morocco: Court orders suspension of news website, editors fined for “false news” and “defamation”

Moroccan authorities must not use press laws to muzzle independent media, Amnesty International said today.

On 10 August 2015 the Court of First Instance in Meknes convicted Hamid Elmahdaouy, journalist and editorial director of the online news website *Badil.info*, of reporting “false news” and publishing an unregistered “newspaper”. The court ordered him to pay a fine of 30,000 Moroccan dirhams (about 3,000 US dollars) and suspend his news website for three months. The journalist intends to appeal the decision.

The verdict came weeks after another conviction in a separate case against Hamid Elmahdaouy for “false reporting”, defamation, slander and insult. Several other journalists have been convicted of “defamation” and “insult” and heavily fined in recent months. Amnesty International fears that the Moroccan authorities are prosecuting independent journalists to muzzle free media and reporting in the country.

News website singled-out for prosecution

On 29 January 2015, an article was published on *Badil.info* reporting that a car had exploded and burnt in Meknes on 29 January 2015 without causing any injuries. Following a complaint by the governor (*wali*) of the region of Meknes, the judicial authorities decided to prosecute journalist Hamid Elmahdaouy for publishing “false news” in “bad faith” which had “troubled public order or caused fear within the population” (Article 42 of the Press Code).

A number of other local and national news websites reported the news in a similar fashion, but are not known to have been prosecuted. The following day, other news sites cited anonymous “security sources” stating that there had been no explosion, but that the car had spontaneously caught fire. It is feared that the authorities may have singled out *Badil.info* for prosecution in this instance because of the news outlet’s independent reporting on local and national news in Morocco, including alleged human rights violations and corruption.

A lawyer defending Hamid Elmahdaouy expressed to Amnesty International his astonishment at the verdict given the charges were baseless. He explained that during the trial he had pleaded that the prosecution had failed to demonstrate that the news was false since the authorities themselves had recognized that the vehicle had burned and it had therefore likely emitted explosion-like sounds during combustion; that the prosecution had failed to prove the bad faith of his client who had relied on reports in several other news websites and attempted to confirm the reports with the authorities before publishing; and that there was no evidence of any trouble caused to public order or fear instilled in the population. The court also convicted the journalist and editor for publishing a “newspaper” that was not registered with the authorities (Article 7 of the Press Code). However, Morocco’s current legislation features no laws regulating online media. The Press Code regulates “newspapers, printing, publishing and the diffusion of books” (Article 1) and not online news websites.

This is Hamid Elmahdaouy’s second conviction in recent weeks. The journalist had written a series of articles about the death of a man following his arrest by police officers a year earlier in the northern city of al-Hoceima, including a video interview of an eyewitness, Rabie Lablak. On 29 June 2015, the Casablanca Court of First Instance convicted the journalist and the eyewitness of “publicly insulting”

the police force, “false reporting” and “slandering denunciation” and sentenced both men to four-month suspended prison terms and 100,000 Moroccan dirhams (about 10,200 US dollars) in compensation to the director of the national police force (Direction générale de la sûreté nationale, DGSN), whose complaint had triggered the prosecutions.

The court convicted both men, although the investigation into the death has yet to be concluded over one year on. The director of Morocco’s police force had also requested that the journalist be banned from doing journalism for 10 years under Article 87 of the Penal Code.

Hamid Elmahdaouy founded *Badil.info* in 2014 after the authorities censored *Lakome.com*, the news website where he previously worked as a journalist. The authorities had blocked the website after judicial authorities ordered the arrest of Ali Anouzla, the editorial director of *Lakome.com*, and accused him of “advocating” terrorism after he reported on a video by a terrorist group threatening the country, even though the article criticized the video and called it “propaganda”. He remains on trial after nearly two years of regularly postponed hearings after his arrest and month-long detention which had triggered a wave of international uproar in September 2013. Journalists should not be punished for carrying out their legitimate activities reporting on and informing the public of matters of public interest, including terrorism.

Defamation prosecutions and heavy fines

On 27 July 2015, the Casablanca Court of First Instance convicted journalist Rachid Niny of reporting false information, insult and defamation against the Minister of Equipment and Transport for reporting that “sub-standard materials” were used to build a portion of a new highway connecting the cities of Asfi and El Jadida. The court ordered him to pay 400,000 Moroccan dirhams (about 40,800 US dollars) in compensation, a heavy sum which could push the publication towards bankruptcy, the journalist told Amnesty International.

The article that triggered the prosecution was published in *Al Akhbar*, a widely-read daily newspaper founded by Rachid Niny in 2012 after he served one year in prison for “disinformation” and “threatening national security” for an article he had written in his previous publication, *Al Massae*, where he criticised counter-terrorism practices and unfair trials of those suspected of terrorist offences. The journalist is also on trial following complaints by several other current and former government ministers.

On 22 June 2015, the same court convicted the widely-read news website *Goud.ma* and its editorial director Ahmed Najim of insult and defamation of a Moroccan businessman who also exercises the function of personal secretary to King Mohammed VI. The businessman had filed a complaint against *Goud.ma* for featuring in its daily press review a short summary of an article published by another news outlet alleging corruption in the context of his business activities. The court ordered the news website and its editorial director to pay the hefty sum of 500,000 Moroccan dirhams (about 51,000 US dollars) in compensation, in addition to a fine of 20,000 Moroccan dirhams (about 2,000 US dollars). Both the defence and the prosecution have appealed the verdict. The director of the newspaper that published the original article is also facing prosecution, according to media reports.

Laws that restrict media freedoms

Morocco’s Ministry of Communication has announced that draft laws to amend legislation on press and publishing and on the status of journalists (Draft Law 88-13 on Press and Publishing and Draft Law 89-13 on Professional Journalists, as well as Draft Law 90-13 creating the National Council for the Press) will be presented to the legislature before the end of the current government’s term in office in 2016 and will include proposed regulation for online news websites. Legislators are also set to revise the Penal Code in the context of upcoming judicial reforms.

Morocco is a state party to the International Covenant for Civil and Political Rights (ICCPR), which recognizes the right to freedom of expression, also enshrined under Article 25 of Morocco’s Constitution. However, current legislation continues to limit media freedoms and other forms of freedom of expression, while issues outlined below are partly unaddressed in preliminary draft bills unveiled so far.

A host of provisions in the Penal and Press Codes criminalize “insult”, “slander”, “defamation” and “false reporting” and impose penalties of imprisonment. While the Minister of Communication’s pledge for a Penal Code free from the sanction of imprisonment is a positive step, imprisonment remains a sanction for peaceful freedom of expression in proposed amendments to the Penal Code.

These provisions are inconsistent with General Comment 34 of the UN Human Rights Committee that offers guidance on how the right to freedom of expression recognized in the ICCPR should be interpreted by States. The Human Rights Committee has stressed the importance of uninhibited freedom of expression, especially with regard to public figures and institutions and raised concern about defamation laws that restrict such expression. False statements made with proven malicious intent and resulting in harm, over and above harm to reputation, should be a matter for civil litigation, and any penalties imposed must be demonstrably necessary and proportionate and not undermine the right itself.

In addition the Human Rights Committee has emphasized that penalties should not be excessively punitive. Amnesty International is concerned that the penalties, including fines imposed in the cases mentioned above are excessive and disproportionate. This could have a chilling effect on reporting on matters of public interest, especially where heavy fines jeopardize the economic viability of media outlets.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also emphasized that suspending an entire publication because of one article is an unnecessary and disproportionate restriction which breaches freedom of expression. Amnesty International is concerned that the suspension of the website *Badil.com* mentioned above constitutes an unnecessary and disproportionate restriction. Article 75 of the Press Code allows courts to order the suspension of a newspaper for up to three months in case of a conviction for reporting “false news”, or insulting the King or other members of the royal family, the monarchy, Islam, or “territorial integrity” in reference to Morocco’s claim over Western Sahara.

Journalists in Morocco also remain at risk of prosecution for “advocacy of terrorism”, a problematic and vaguely-defined concept under Article 218-2 of the Penal Code. Terrorism related offences should be clearly defined so as not to lead to unnecessary or disproportionate restriction of the right to freedom of expression. In this regard, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has emphasized the importance of access to information, and that reporting on terrorism must not be conflated with advocacy or apology. He has recommended that offences of “apology” or “advocacy” of terrorism be limited to criminalizing only the making of public statements with the intent to incite the commission of terrorist offences and causing a danger that such offences may be committed.

Public document

For more information please call Amnesty International’s press office in London, UK, on +44 20 7413 5566 or email: press@amnesty.org International Secretariat, 1, Easton St., London WC1X 0DW, United Kingdom www.amnesty.org