

Criminal Penalties for Employers in Moroccan Labor Law: A Study of Their Specificity and Balance Between Worker Protection and Economic Development

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ABSTRACT:

The evolution of the labor field through the diversification of its activities and methods necessitated rapid development of social legislation, leading to a genuine expansion of crimes in the labor sphere. This required confronting them through the establishment of appropriate penalties, ranging from those applicable to natural persons to those applied to legal persons. Penalties in the labor field are characterized by specific features that distinguish them from general criminal law. The nature of the legal person requires a special type of penalty commensurate with it.

Consequently, criminal law intervention in the labor field became necessary to serve as a bulwark against violations committed by employers against workers, in order to enforce respect for labor law and strengthen its imperative nature. To ensure the application of its rules, the Moroccan legislator established punitive rules that protect the worker from any violation.

However, while drafting these imperative rules, the legislator must consider the urgent need for economic investments. It must balance between protecting workers' rights from employer arbitrariness and the employer's desire for growth and prosperity through increasing project profits.

Criminal penalties in the labor field are divided into principal penalties and additional penalties. The principal penalties applicable in the labor field range between fines and imprisonment in limited cases. As for additional penalties, the Moroccan legislator defined them in the Criminal Code, including those specific to legal persons such as dissolution of the legal person and closure of the establishment, and those applicable to both natural and legal persons such as publication of the conviction judgment, prohibition from practicing commercial activity, and confiscation.

Keywords: Criminal penalties, Labor law, Employer liability, Moroccan legislation, Worker protection, Legal persons, Economic development, Principal penalties, Additional penalties

1. Introduction

The rapid transformation of the global economy and the diversification of labor activities have significantly impacted the legal frameworks governing employment relationships. In Morocco, as in many jurisdictions worldwide, the legislator has been compelled to develop a comprehensive penal system specifically tailored to address violations within the labor sector. The intersection of criminal law and labor law presents unique challenges, as it requires balancing the protection of workers' fundamental rights with the necessity of fostering a conducive environment for economic investment and enterprise growth.

The Moroccan labor penal system reflects a deliberate policy choice to prioritize financial penalties over liberty-depriving sanctions, with imprisonment reserved for exceptional circumstances involving recidivism or grave violations. This approach acknowledges the critical role of employers in economic development while ensuring that workers are shielded from exploitation, unsafe conditions, and arbitrary treatment. The legislator's dual discourse—simultaneously warning and encouraging employers—demonstrates a sophisticated understanding of the socio-economic dynamics at play.

This study examines the specificity of criminal penalties applicable to employers under Moroccan law, analyzing how the legislator achieves equilibrium between deterrence and economic encouragement. Through a descriptive and analytical methodology, this research investigates the principal penalties (fines and imprisonment) and additional penalties (dissolution, closure, confiscation, loss of commercial capacity, and publication of judgments) established within the Moroccan legal framework. The analysis draws upon primary legal texts including the Moroccan Labor Code, the Criminal Code, and specialized legislation such as Law 19.12 concerning

domestic workers and Law 20.05 regarding joint-stock companies.

The significance of this research lies in its contribution to understanding how developing legal systems, particularly those in the MENA region, navigate the complex relationship between labor protection and economic development. By examining Moroccan legislative choices, this study offers insights potentially applicable to other jurisdictions facing similar challenges in harmonizing worker rights with investment incentives.

2. Research Problem

This research constitutes an inventory of the types of penalties relied upon by the Moroccan legislator to deter the employer from violating criminal labor legislation, while also encouraging continued economic activity. When establishing punishment in the labor field, the legislator addresses the employer with two discourses: first, a warning discourse, and second, an encouraging discourse. Thus, punishment in the labor field has a specificity that distinguishes it from others. Hence, we pose the following research question:

What are the penalties relied upon by the Moroccan legislator to balance between worker protection and employer encouragement in the labor field?

3. Methodology

This study employs both descriptive and analytical methodologies. The descriptive approach involves systematically documenting and categorizing the penalties adopted by the Moroccan legislator in the labor field, including their legal foundations, scope of application, and procedural requirements. The analytical component critically examines the effectiveness of these penalties in achieving the stated legislative objectives of balancing worker protection with economic encouragement.

The research relies primarily on legal analysis of statutory texts, including the Moroccan Labor

Code (Code du Travail), the Criminal Code (Code Pénal), and specialized legislation such as Law 19.12 on domestic workers and Law 20.05 on joint-stock companies. Secondary sources include scholarly commentaries and jurisprudential interpretations from Moroccan legal scholarship. The comparative dimension, while limited, considers international labor standards and practices from other jurisdictions to contextualize Moroccan legislative choices.

Data collection involves systematic review of legal texts, scholarly articles, and judicial precedents where available. The analysis focuses on the period following the major labor code reforms and the introduction of legal person criminal liability in Moroccan law.

4. Research Structure

The research structure consists of two main sections. Section One examines the principal penalties imposed by the criminal judge on the employer violating criminal labor legislation, divided into financial penalties and imprisonment penalties. Section Two addresses additional penalties imposed by the criminal judge in addition to the principal penalty, including dissolution of legal persons, closure of establishments, confiscation, loss of commercial capacity, and publication of judgments.

Section One: Principal Penalties

The penalty in Moroccan criminal labor law is represented by fines and imprisonment. Other penalties such as capital punishment and life imprisonment do not exist in the labor penal system, due to the desire to protect the employment relationship on one hand, establish criminal liability for the employer on another, and ensure and encourage the continuation of investment and the economy on a third. Therefore, the specificity of the labor field requires the legislator to formulate penalties consistent with the three aforementioned paradoxes.

1.1. The Fine

The fine is considered a criminal penalty targeting specific purposes such as deterrence and intimidation, achieved by depriving the convicted person of part of their financial assets, whether a natural or legal person, and causing them pain through this deprivation (Al-Junzuri, 1967, p. 95). It is a penalty imposed by the state through its punitive authority over individuals and companies exclusively, and the state alone undertakes to establish the lawsuit for its application. The proceeds of this fine go to the state treasury and do not belong to the injured party, as stipulated by most international legislation. The fine is also subject to the principle of legality; analogy cannot be used, and it cannot be applied retroactively. It aims fundamentally at achieving punitive purposes rather than compensating the injured party (Badr Al-Ghaili, 2022, p. 416).

The criminal fine as a misdemeanor penalty affects the employer's financial assets. Its concept, according to Article 35 of the Moroccan Criminal Code, is: obligating the convicted person to pay a specified amount of money in the currency legally circulating in the Kingdom. If it exceeds 1,200 dirhams (approximately €120), it constitutes a principal misdemeanor penalty that can be imposed alone, with imprisonment, or at the discretion of the criminal judge according to the nature of the crime, while respecting the principle of legality—no crime or penalty without a legal text (Al-Almi, 2007, p. 398).

The criminal fine is the penalty imposed and ruled on the employer by a competent court as a result of an act the legislator considers a crime. This fine is paid after the judgment becomes final to the state treasury, along with judicial costs, in the legally circulating currency (Balmahjoub, n.d., p. 158).

The fine is characterized by several features, including its subjection to the principle of legality, where it must be stipulated by law. The judge cannot impose a fine on their own initiative or exceed the limits drawn by law for

its application. The criminal fine can only be imposed by judicial judgment, where the judge verifies the existence of crime elements and the criminal liability of the perpetrator, then the criminal judge determines the fine within the scope of discretionary authority.

In the Moroccan Labor Code, it is evident that the fine is the most common penalty, as the Moroccan legislator did not stipulate imprisonment in the Labor Code except in two exceptional cases as an aggravating circumstance in case of recidivism. The remaining penalties are financial. This is attributed to three factors:

First, the financial penalty is considered among the penalties that achieve deterrence in the labor field due to the importance of money within this system, while ensuring the continuity of economic activity without stopping work in workshops or enterprises.

Second, the financial penalty is considered an alternative to imprisonment because it does not directly affect physical freedom and does not cause prison overcrowding.

Third, the financial penalty generates income for the state treasury, unlike imprisonment which costs the state additional expenses.

The Moroccan legislator relied on the fine as the sole penalty in Law 19.12 concerning the determination of conditions of work and employment of domestic workers. It penalized with financial penalties ranging between 500 and 30,000 dirhams (€50 to €3,000) any employer violating the provisions and conditions of employing domestic workers in Articles 23 to 25 of Law 19.12.

The fine is also considered, in occupational accidents, the principal penalty applied to punish the violations limited by the legislator, as well as a guarantee for the employer to fulfill the obligations incumbent upon them.

In its keenness to protect the role performed by various compensations and incomes guaranteed by the law concerning compensation for occupational accidents and occupational

diseases in the life of the injured worker, or their beneficiaries in case of death, the legislator strengthened the punitive process by establishing the delay fine. It grants the creditor the right to claim a mandatory daily or monthly fine in case of unjustified delay by the employer or their insurer in paying what is due upon maturity. This ensures payment of the daily compensation due for temporary disability, as well as the income for permanent disability, or to beneficiaries in case of death (Badr Al-Ghaili, 2022, p. 425).

The mandatory fine is characterized by the following features:

First, the mandatory fine is predetermined by the Moroccan legislator in Law No. 18.12, and therefore is subject to the principle of legality. The court's will and authority in estimating the fine cannot be relied upon.

Second, the mandatory fine is a means of compulsion and coercion to compel the employer to fulfill their obligation towards the worker and execute what the judgment stipulates in their favor.

Third, the mandatory fine is imposed by a competent court, and the court is obligated to rule on determining the mandatory fine based on the percentage specified in the law.

Moroccan criminal company law is characterized by the fact that most penalties stipulated therein are financial and concern primarily members within the management and administration bodies of these companies. Among the most important examples of crimes carrying financial penalties are the distribution of fictitious profits, and publishing and presenting non-authentic accounts. These penalties are often applied independently.

Additionally, the new amendment brought by Law 20.05 concerning joint-stock companies deleted several imprisonment penalties and increased the value of financial penalties. This clearly demonstrates that the Moroccan legislator relies on financial penalties as a basis

for deterring the employer from violating criminal labor and employment legislation.

From the foregoing, it is clear that the Moroccan legislator adopted the fine as a principal penalty in the labor field through all laws concerned with employment, whether the Labor Code, company laws, or even the domestic workers law.

1.2. Imprisonment

Article 17 of the Moroccan Criminal Code stipulates that imprisonment is a liberty-depriving penalty applied in disciplinary and regulatory misdemeanors, with a minimum duration of one month and a maximum of five years.

The penalty of imprisonment, like other penalties, has a legal, legitimate, and judicial nature. It is subject to the principle of legality and the principle of personality.

While the fine can be applied to both the natural and legal employer, imprisonment cannot be conceived except against the natural employer. Therefore, it deprives natural persons of their freedom and cannot deprive a legal person of its freedom.

Returning to the Moroccan Labor Code, we find that the Moroccan legislator did not adopt imprisonment except in two exceptional cases:

First, recidivism in violating the provisions of Article 10 of the Labor Code concerning the prohibition of forcing workers to perform work under duress.

Second, recidivism in violating the provisions of Article 143 of the Labor Code concerning the employment of children under 15 years of age.

From this, it is clear that the Moroccan legislator in the Labor Code did not fundamentally rely on liberty-depriving penalties out of consideration for the employer and the necessity of continuing activity within the enterprise. The imprisonment penalty occupies a weak position compared to the fine, which dominates punitive provisions

when violating Labor Code texts, as imprisonment was only stipulated in two cases.

However, the Moroccan Criminal Code stipulated in some of its provisions imprisonment from one month to two years if the employer performs certain acts aimed at harming industrial or work freedom, or if the purpose of these acts is to reduce wages.

The Criminal Code is not devoid of imprisonment penalties, which may even be prison penalties for some crimes committed by the employer against the worker and which have another criminal characterization outside the Labor Code characterization. For example, an employer who commits sexual harassment against a female worker: while the Labor Code considers this a serious fault granting the female worker the right to leave the enterprise and considers the act as arbitrary dismissal, the Criminal Code characterizes the act as an independent crime and punishes the employer based on Criminal Code provisions rather than the Labor Code.

Given that the Moroccan legislator, like other legislations, did not bind the employer with liberty-depriving penalties to allow them to develop their economic activity away from prison walls. If they err in managing this project, they pay deterrent financial fines. The absence of imprisonment penalties in the labor field was not intended to eliminate the employer's criminal liability and leave workers at their mercy without oversight or accountability.

Section Two: Additional Penalties

In addition to principal penalties, the Criminal Code stipulates additional penalties, where multiple additional penalties can be imposed on the employer, primarily related to the type of crime. The Moroccan legislator addressed them through the Criminal Code or other laws.

Additional penalties are issued alongside principal penalties in a complementary manner, and the judge is not permitted to rule on them alone. Some jurisprudence has emphasized the

deterrent nature of these penalties within the framework of criminal labor law.

Returning to the Moroccan Labor Code, we find that the most important of these additional penalties stipulated by the Moroccan legislator are essentially the dissolution of the legal person and other additional penalties.

2.1. Dissolution of the Legal Person

Article 127 of the Moroccan Criminal Code is considered a reference for the penal system specific to legal persons, stating: "Legal persons can only be sentenced to financial penalties and additional penalties listed in items 5, 6, and 7 of Article 36 of the Moroccan Criminal Code, and preventive measures listed in Article 62 of the same law may also be imposed.

After the Moroccan legislator established the criminal liability of the legal person as an employer, it established the dissolution penalty against it, which is consistent with the nature of the legal person.

Article 47 of the Moroccan Criminal Code stipulated that dissolution of the legal person is its prohibition from continuing its social activity even under another name and under the supervision of other directors, managers, or administrators, resulting in the liquidation of the legal person's assets.

The dissolution penalty of the legal person is equivalent to the death penalty for a natural person; it is a penalty resorted to only in cases of extreme necessity and absence of hope in reforming the legal person. It permanently prohibits practicing the activity and liquidates its assets, giving the penalty a strong deterrent effect.

According to the Moroccan Labor Code, the dissolution penalty can be conceived in two cases:

First, dissolution of professional unions, according to Article 426-1 of the Labor Code, and this dissolution can only occur based on a court judgment.

Second, the case stipulated in Article 422, which in turn referred to Article 426 of the Moroccan Labor Code.

There is also a penalty similar to the dissolution of the legal person, which is the closure of the establishment, enterprise, or workshop. This is a possibility the legislator grants to the judiciary to rule on closure alongside the conviction judgment. This closure judgment can only be conceived in labor crimes related to health and safety preservation, according to Article 300 of the Labor Code, with a closure duration between 10 days and 6 months (Al-Ajuz, 1996, p. 721).

Article 300 stipulates: "The court may, in case of violating legislative and regulatory provisions concerning compliance with health and safety conditions, issue its conviction judgment accompanied by a decision for temporary closure of the establishment for a period not less than ten days and not exceeding six months, whether the warning procedure is in effect or not. Closure requires compliance with the prohibition referred to in paragraph two of Article 90 of the Criminal Code, and in case of non-compliance with these provisions, the penalties stipulated in Article 324 of the Criminal Code shall apply. The court may, in case of recidivism, issue its judgment for permanent closure of the establishment according to Articles 90 and 324 of the Moroccan Criminal Code.

What is evident from this article is that the Moroccan legislator is keen on workers' safety and health, and also keen on providing a healthy and suitable work environment that guarantees the employer provides the worker with health and safety conditions and a secure work environment free from all occupational and health hazards (Luay Al-Din, 2009-2010, p. 209).

Therefore, the time factor distinguishes between dissolution of the legal person as an additional penalty and closure of the establishment, as dissolution of the legal person is permanent while closure of the establishment is for a limited time period. The establishment can

return to its social activity if the reasons that led to it cease. As for dissolution of the legal person, it creates a permanent severance of the social activity the enterprise was practicing.

2.2. Other Additional Penalties

There are some other additional penalties that affect the employer not in their freedom or financial assets directly, but negatively affect the continuity of the social economic activity they were conducting before committing the criminal act. We shall address these penalties through three models:

2.2.1. Confiscation

Confiscation refers to the judicial judgment ordering the forced removal of ownership of a thing from its owner and adding it to state property due to their engagement in an illegitimate act. Confiscation does not include money alone like the fine, but extends to things that cannot be described as money. The Moroccan legislator did not make confiscation absolute but restricted it to the condition of not affecting others' rights. Confiscation has not only a punitive nature but also a preventive nature, manifested in protecting workers from dangerous materials that can be confiscated and tools that could constitute a potential danger to workers.

2.2.2. Loss of Commercial Capacity

Unlike financial penalties which are only imposed against company managers or economic interest groups, loss of commercial capacity can affect, in addition to these managers, even small natural traders. This is a procedure aimed at protecting public interest and public order, whether the interest is professional, political, or social. This means that loss of commercial capacity can be conceived for traders who commit crimes related to their social relationship with workers. A trader employer of a worker who commits an act criminalized by law against their worker can, in addition to the principal criminal penalty, be sentenced to loss of commercial capacity, which is their prohibition from practicing the trade

profession, whether this trader is a natural or legal person, according to Article 756 of the Commercial Code, which equalized loss of commercial capacity between managers of individual enterprises or company forms.

2.2.3. Publication of the Judgment

The Moroccan legislator regulated the publication of the judgment in Article 48 of the Criminal Code, stipulating that it shall be published in whole or in part in a newspaper or newspapers designated by the court, or posted in places designated by the court, at the expense of the convicted person, provided that publication costs do not exceed what the court estimated for this purpose and that the posting period does not exceed one month. This penalty cannot be applied except where a text permits it. It is a penalty involving a certain defamation of the crime committed by the employer, head of the enterprise, which negatively affects the employer's and enterprise's reputation and causes them economic damage and weakened customer confidence.

5. Conclusion

The Moroccan legislator, through its punitive policy, stipulated all possible penalties to deter the employer from committing any violation of its criminal texts. We find that the Moroccan legislator stipulated imprisonment and fine penalties as principal penalties, in addition to a set of additional penalties including dissolution of the legal person.

However, it can be said that imprisonment, closure, and dissolution of the legal person penalties all came within a narrow scope at the level of the Labor Code, and that the Moroccan legislator chose flexibility in punitive policy in facing the employer. This is attributed to granting the employer space and freedom to develop their enterprises and economic investment.

5.1. Limitations and Future Research

This study is subject to several limitations that warrant consideration. First, the analysis relies

primarily on statutory interpretation and limited access to judicial precedents, as Moroccan labor criminal case law remains relatively under-documented in international databases. Second, the comparative dimension is constrained by the study's focus on Moroccan legislation; future research could benefit from expanded comparative analysis with other MENA region jurisdictions and European Union member states.

Future research directions should include empirical studies examining the actual

application rates of these penalties by Moroccan courts, comparative analysis of penalty effectiveness across different legal systems, and investigation of the relationship between penalty severity and foreign direct investment flows. Additionally, the impact of the 2019 labor code reforms on penalty application warrants scholarly attention. The intersection of digital economy developments and labor criminal penalties represents another promising avenue for future inquiry.

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