

Legislative Decree No. 10/93

EXERCISE OF RADIO-BROADCASTING ACTIVITY

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
(Radio-broadcasting activity)**

1. The present Decree governs the exercise of radio-broadcasting activity in Cape Verde.
2. Radio-broadcasting shall be considered to be the transmission of sound communications, through the medium of radio-electric waves or any other appropriate medium, destined for reception by the general public.
3. The exercise of radio-broadcasting activity shall be subject to licensing under the terms of the law and international standards.

**Article 2
(Exercise of radio-broadcasting activity)**

1. Radio-broadcasting activity may be exercised by public, private or cooperative bodies, in accordance with the present Decree and under the terms of the licensing regime to be defined by regulatory decree.
2. The Decree referred to in paragraph 1 must provide for the terms which must be observed during public competitions for the award of licenses to exercise radio-broadcasting activity, the grounds for rejection of proposals and the rules of transmission, cancellation and the period of validity thereof.

**Article 3
(Public service provision)**

1. The public radio-broadcasting service shall be provided by *Rádio de Cabo Verde* (Cape Verde Radio), under the terms of this Decree and the respective statutes.
2. *Rádio de Cabo Verde* (Cape Verde Radio) may grant, through a public competition process, concessions to exploit any commercial program using the corresponding frequencies, on the condition that such use is authorized by the relevant body.

Article 4
(Prohibition of the exercise of radio-broadcasting activity)

The exercise of radio-broadcasting activity financed by political parties or associations, trade union, employer and professional organizations, as well as local authorities *per se*, or through bodies in which they hold equity, shall be prohibited.

Article 5
(General aims of radio-broadcasting)

The general aims of radio-broadcasting activity shall be to:

- (a) contribute to informing the public, guaranteeing citizens the right to inform others, inform themselves and be informed, without hindrance or discrimination;
- (b) contribute to the promotion of national culture, guaranteeing the possibility of expression and encounters involving various points of view, through the promotion and free expression of thought and those cultural values which express the national identity;
- (c) promote the establishment of practices of citizenship characteristic of a democratic State.

Article 6
(Specific aims of radio-broadcasting)

1. The specific aim of the public radio-broadcasting service shall be to contribute to the promotion of social and cultural progress, the civic and social awareness of Cape Verdeans and the strengthening of national unity and identity.
2. In order to achieve this aim, the public radio-broadcasting service must specifically:
 - (a) ensure the independence, plurality, rigor and objectivity of information in order to safeguard its independence with regard to the Government, the administration and the other public powers;
 - (b) contribute, through balanced programming, to entertaining and promoting education and culture among the general public, taking into account the diversity of ideas, occupations, interests, environments and origins existing within the population;
 - (c) foster the defense and dissemination of Cape Verdean culture;
 - (d) promote the creation of educational or training programs aimed in particular at children, young people, adults and the elderly with different skill levels;
 - (e) contribute to the civic and political enlightenment, training and participation of the population, through programs containing analysis, comment, criticism and debates which stimulate healthy encounters involving different ideas, as well as contributing to the formation of opinions.

Article 7
(Specific aims of private and cooperative activity)

The specific aims of local and regional private and cooperative radio-broadcasting activity shall be to:

- (a) expand radio programming to cover interests, issues and forms of expression of a local and regional nature;
- (b) preserve and disseminate the values characteristic of local and regional cultures;
- (c) broadcast information of particular local and regional interest and foster solidarity, fellowship and neighborliness between the populations living in the broadcast area.

Article 8
(Radio-electric spectrum)

The radio-electric spectrum shall form a part of the State's public domain.

CHAPTER II
INFORMATION AND PROGRAMMING

Article 9
(Freedom of expression and information)

- 1. Freedom of expression of thought through radio-broadcasting shall include the fundamental rights of the citizens to free and pluralistic information, essential to the practice of democracy, the defense of peace and the economic, social and spiritual advancement of the nation.
- 2. In the context of the exercise of radio-broadcasting activity, programming shall be independent, except in the cases provided for by this Law. Neither the public administration nor any other sovereign body, with the exception of the courts, may prevent, or impose conditions regarding the broadcasting of any program.
- 3. The broadcasting of programs or messages inciting violence or violating criminal law or the fundamental rights, freedoms and guarantees in general, shall not be permitted.
- 4. The broadcasting of programs liable to have a negative influence on the formation of the characters of children or adolescents shall not be permitted.

Article 10
(Language of broadcasting)

1. Programs shall be broadcast in Portuguese or in the national language, without prejudice to the possible use of any other language, in the following cases:
 - (a) programs designed for the teaching of foreign languages;
 - (b) the broadcasting of cultural and musical programs from other countries;
 - (c) programs arising from specific information needs.
2. Bodies exercising radio-broadcasting activity must, in particular, ensure the production and broadcasting of intelligent programs, as well as meeting their obligation to safeguard the promotion of the music of Cape Verdean authors in the national language and at national musical performances.

Article 11
(Identification of programs)

1. Programs must include an indication of their respective title and the name of the individual responsible for them, as well as artistic and technical credits. Furthermore, records shall be kept containing the identities of the author, producer and maker.
2. In cases of a lack of indication or doubt, those responsible for programming shall be liable for the omission.
3. Following broadcasting, all programs must be recorded and stored for the period established under the Media Law, and depending on the daily or non-daily nature of the program, unless a longer period has been determined by the judicial authority, the respective recording constituting possible evidence.

Article 12
(Registration of works broadcast)

1. Bodies exercising radio-broadcasting activity shall organize the monthly registration of the works broadcast as a part of their programs, for the purposes of the corresponding copyright.
2. Registration shall include the following elements:
 - (a) title of the work;
 - (b) authorship;
 - (c) performer;
 - (d) language used;
 - (e) date and time of broadcast;
 - (f) individual responsible for broadcast.

Article 13
(News services)

1. Bodies exercising radio-broadcasting activity shall present, during the periods of transmission, daily news services.
2. The news service, coordination of news services and editing functions must be carried out by professional journalists.

Article 14
(Advertising)

The regulatory standards governing advertising and advertising activity shall apply to radio-broadcasting activity.

Article 15
(Advertising restrictions)

The following types of advertising shall be expressly prohibited:

- (a) concealed, indirect or fraudulent advertising and any form of advertising that might be misleading with regard to the quality of the goods or services advertised;
- (b) advertising by political parties or associations, trade union, employer and professional organizations;
- (c) advertising of products harmful to health, such as those classified as such by law, and of objects or mediums with pornographic or obscene content.

Article 16
(Compulsory broadcasts)

1. The public radio-broadcasting service shall be obliged to broadcast messages requested by the President of the Republic, the President of the National Assembly and the Prime Minister, as well as communiqués and unofficial notes in accordance with the applicable law, free of charge, in their entirety and with due prominence and the utmost urgency.
2. In case of declaration of a state of siege, emergency or war, the provision contained in the preceding paragraph shall apply to all bodies exercising radio-broadcasting activity.

Article 17
(Right to broadcasting time for communication purposes)

1. Political parties shall be guaranteed the right to public radio-broadcasting service broadcasting time for communication purposes in accordance with the law.
2. Trade union organizations and employers' associations shall be guaranteed the following amounts of broadcasting time for communication purposes:

- (a) 15 minutes per month for trade union associations and employers' associations, 7.5 minutes to be used every two weeks.
 - (b) five minutes per month for non-affiliated trade unions.
2. Broadcasting time shall be understood to be the programming slots which are the responsibility of the right holder, a fact which must be expressly mentioned at the beginning and end of each program.
3. Those responsible for programming must, in collaboration with the holders of the right to broadcasting time, and in accordance with the present Law, draw up general plans for the respective use of that broadcasting time.
4. Should it prove absolutely impossible to reach an agreement on the plans referred to in the previous paragraph, as well as on the requirements of the parties concerned, the matter shall be referred to the Social Communication Council for arbitration.

Article 18

(Right to broadcasting time of religious faiths)

1. In the public radio-broadcasting service, religious faiths shall be guaranteed broadcasting time never more than one hour per day, allotted according to their representative nature, in order to exercise their activities.
2. The conditions of use of the broadcasting time shall be set by the body which manages the public service.

Article 19

(Restrictions to the right to broadcasting time)

1. The holders of the right to broadcasting time may not exercise that right on Saturdays, Sundays or national holidays, nor within a month prior to the date set for the start of the electoral campaigning period for the Presidency of the Republic, the National Assembly or local authorities.
2. During electoral periods, the exercise of the right to broadcasting time shall be governed by the Electoral Law.
3. Outside of electoral periods, direct appeals for votes shall be forbidden during the exercise of the right to broadcasting time.

Article 20

(Guarantee of technical means)

1. Holders of the right to broadcasting time shall be provided with the essential technical means to make their respective programs in conditions of absolute equality, this right expiring if it has not been exercised by the end of each month.
2. Should the right to broadcasting time not be exercised owing to circumstances not imputable to the holder of that right, the unused broadcasting time may be

accumulated along with that of the first month which follows in which no impediment exists.

CHAPTER III RIGHT TO REPLY

Article 21 (Ownership and restrictions)

1. Any natural or legal person who feels prejudiced by broadcasts which constitute a direct affront or refer to false or erroneous facts which could affect his good name or reputation shall have the right to reply, to be included without charge in the same program or, should that not be possible, at an equivalent transmission time, once only and without interjections or interruptions.
2. For the purposes of the preceding paragraph, only parties whose interests have actually been directly affected may be considered to be the holders of the right to reply.

Article 22 (Exercise of the right to reply)

1. The right to reply must be exercised by its direct holder, his respective legal representative, heirs or surviving spouse, in one of the two following editions of the same program.
2. The right to reply must be exercised through a request in the form of a registered letter, with acknowledgement of receipt and notarized signature, addressed to the broadcaster, and containing objective reference to the offensive, false or erroneous fact and indicating the content of the intended reply.
3. The exercise of the right provided for in the present Article shall be independent of any civil or criminal liability that might arise in that case, and shall not be prejudiced by the fact that the broadcaster may have freely corrected the broadcast in question.

Article 23 (Decision on the broadcasting of the right to reply)

1. The broadcaster shall decide on the broadcasting of the reply within 72 hours of receipt of the letter formalizing the request, and must notify the interested party of the respective decision within the following 48 hours.
2. The holder of the right to reply may appeal against the decision of the broadcaster before the Social Communication Council or the competent court.

Article 24
(Broadcasting of the reply)

1. or correction shall be broadcast within 72 hours of notification of the interested party.
2. The broadcast must always contain a mention of the decision-making body.
3. The reply or correction shall be read by an announcer of the broadcaster, or must be worded in a similar way to that used to commit the alleged offense.
4. The broadcasting of the reply or correction must neither be preceded nor followed by any comments, except for those necessary to identify the author or correct possible factual inaccuracies in terms of content.

CHAPTER IV
LIABILITY

Article 25
(Forms of liability)

1. The broadcasting of programs which culpably infringe the provisions of the present Law constitutes a disciplinary fault¹, without prejudice to the corresponding civil and criminal liability.
2. Radio-broadcasting operators shall share civil and joint liability with those responsible for the broadcasting of pre-recorded programs, with the exception of programs broadcast under the right to broadcasting time.
3. Acts or behavior adversely affecting legally-protected interests and values, committed through radio broadcasts, shall be punishable under the same terms as those governing offenses involving the abuse of freedom of the press.

Article 26
(Criminal liability)

1. The following individuals shall be liable for the offenses mentioned in paragraph 2 of the preceding Article:
 - (a) the producer or maker of the program, or its author;
 - (b) those responsible for programming or those replacing them, should it not be possible to determine the identity of the producer, maker or author of the program.
2. If not directly responsible for the offense, those responsible for programming shall not be held to be criminally liable if they can prove that they were unaware of the program in which the offense was committed.
3. In the case of live broadcasts, as well as those directly responsible for the offense, those who were duty-bound and able to prevent the offense from being committed but who failed to do so shall also be liable.

¹ Translator's note: Original text reads "falta disciplinar", this must be a typo, probably meant to read "falta disciplinar" given the context.

Article 27
(Joint liability)

The body during whose programs the offenses were committed shall be jointly liable for payment of fines provided for by this Law, without prejudice to the right of recovery of the sums actually paid.

CHAPTER V
SANCTION MEASURES

Article 28
(Illegal radio-broadcasting activity)

1. The exercise of radio-broadcasting activity by unlicensed or non-concession holding bodies shall lead to the closure of the broadcasting station, as well as the sealing of the respective installations, with those responsible being subject to the terms of imprisonment and fines set out in accordance with the Media Law.
2. The goods present in the installations closed under the provision contained in the preceding paragraph shall be declared forfeit to the State, without prejudice to the rights of third parties acting in good faith.

Article 29
(Broadcasting misconduct)

Those individuals who intentionally promote the broadcasting of programs not authorized by the competent bodies shall be fined under the terms of the Media Law, without prejudice to more serious penalties arising from the case.

Article 30
(Perpetration of the offense)

Offenses involving the abuse of the freedom of the press, calumny, public incitement to commit an offense and the public condoning of an offense shall be considered to have been committed with the broadcasting of the offensive or provocative program.

Article 31
(Penalty payments)

Under the terms of the Media Law, penalty payments shall be applied to radio-broadcasting operators during whose schedules any of the offenses referred to in the previous Article have been committed.

Article 32
(Qualified disobedience)

The following shall constitute offenses of qualified disobedience:

- (a) failure by those responsible for programming, or those replacing them, to comply with the decision of the court which orders the broadcasting of the reply:
- (b) refusal to broadcast court rulings, under the terms of Article 41.

Article 33
(Suspension of the exercise of the right to broadcasting time)

1. Holders of the right to broadcasting time infringing the provisions of Article 9(2) and (3) and Article 19(2) and (3) shall, depending on the seriousness of the offense, be punished with the suspension of the exercise of the right for a period of three to 12 months, with a minimum period of suspension of six months in cases involving a repeat offense.
2. The competent tribunal may decide, prior to handing down a ruling, on the suspension of the exercise of the right to broadcasting time.

Article 34
(Infringement of rights, freedoms and guarantees)

1. Whosoever infringes any of the rights, freedoms or guarantees enshrined in the present Decree shall be fined in accordance with the Media Law.
2. The application of the sanction provided for in the preceding paragraph shall not prejudice the establishment of civil liability for the damages caused to the broadcaster.
3. Should the author of the offense be an official or agent of the State, or of another legal entity governed by public law, be charged with the offense of abuse of authority, the State or legal entity governed by public law shall be jointly liable with the author of the offense for the payment of any fine which might arise in that case.

Article 35
(Fines)

1. Infringement of Articles 1, 12 (2), 13 and 42 (1) shall be punishable with a fine in accordance with the Media Law.
2. The member of Government responsible for social communication shall be responsible for applying the fines provided for in the preceding paragraph.

CHAPTER VI
PROCEDURAL PROVISIONS

Article 36
(Jurisdiction)

1. The competent court to hear cases of the infringements provided for by the present Law shall be the court with jurisdiction over the area in which the headquarters of the broadcaster are located, except in the case of offenses involving defamation, calumny or threats. In such cases, the court with jurisdiction over the area in which the victim's domicile is located shall be competent.
2. In cases of unlicensed broadcasting, where the decisive element regarding competence under the terms of the preceding paragraph is unknown, the Regional Court of Praia shall be competent.

Article 37
(Applicable procedure)

1. Proceedings involving criminal offenses committed through broadcasts shall be governed by the corresponding regulations of the Law on Criminal Proceedings.
2. Summary procedure shall be applicable to the suspension of the exercise of the right to broadcasting time, provided for in Article 33(2).

Article 38
(Deadline for challenging appeals)

Broadcasters wishing to challenge an appeal brought before the courts owing to the halting of the broadcasting of a reply must do so within five days.

Article 39
(Admission of evidence)

For the purposes of this Law, all forms of evidence permitted under criminal proceedings shall be allowed.

Article 40
(Ruling)

A legal ruling shall be handed down within 72 hours of the expiry of the deadline for challenges.

Article 41
(Broadcasting of the reply)

The reply ordered by the court shall be broadcast within 72 hours of the ruling becoming final and binding and it shall be mentioned that the broadcast was determined through a court ruling.

CHAPTER VII
FINAL PROVISIONS

Article 42
(Register and copyright)

1. Those bodies exercising radio-broadcasting activity shall establish sound and music archives, with the aim of maintaining the public interest registers.
2. The transfer and use of the registers mentioned in the preceding paragraph shall be defined by order of the government official responsible for social and cultural communication, taking into account their historical and cultural value for the community, with responsibility for copyright and related legally-protected rights resting with the requesting body.

Seen and approved in the Council of Ministers

Carlos Veiga – Ondina Ferreira.

Promulgated on June 29, 1993

Let it be published:

The Interim President of the Republic, AMÍLCAR FERNANDES SPENCER LOPES.

Countersigned on June 29, 1993.

The Prime Minister,

Carlos Veiga.