

Crime of Exploiting Persons with disabilities in Begging in Light of the Provisions of Law No. 25-01

جريمة استغلال ذوي الاحتياجات الخاصة في التسول على ضوء أحكام

القانون رقم 25-01

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الملخص:

تهدف هذه الورقة البحثية إلى تسليط الضوء على الأحكام الجديدة للقانون رقم 25-01 المتعلقة بحماية وترقية الأشخاص ذوي الاحتياجات الخاصة ، والذي ألغى القانون رقم 02-09 المتعلق بحقوق وترقية الأشخاص ذوي الإعاقة، حيث تركز بشكل خاص على أحكام المادة 48 من القانون رقم 25-01 التي جرّمت استغلال الأشخاص ذوي الاحتياجات الخاصة في التسول.

من أهم الأسباب التي دفعت المشرع الجزائري إلى تجريم هذا الفعل هو انتشار استغلال الأشخاص ذوي الاحتياجات الخاصة من قبل أفراد وعصابات، حيث يستغل هؤلاء الأفراد الأشخاص ذوي الاحتياجات الخاصة لجمع الأموال عن طريق وضعهم على الكراسي المتحركة في الساحات العامة والمساجد ومراكز التسوق الكبرى والأسواق الشعبية، وحتى على الطرق السريعة، متجاهلين حقهم في العيش في بيئة توفر لهم الحماية والكرامة الإنسانية.

الكلمات المفتاحية: الأشخاص ذوي الاحتياجات الخاصة؛ التسول، تمكين الأشخاص ذوي الاحتياجات الخاصة؛ استغلال الأشخاص ذوي الإعاقة.

Abstract:

This research paper aims to shed light on the new provisions of Law No. 25-01, relating to the protection and promotion of persons with disabilities, which repealed Law No. 02-09, relating to the rights and promotion of persons with special needs, as it focuses specifically on the provisions of Article 48 of Law No. 25-01, which criminalized the exploitation of persons with disabilities in begging.

One of the main reasons that prompted the Algerian legislature to criminalize this act is the widespread exploitation of persons with disabilities by individuals and gangs, these individuals exploit persons with disabilities to raise money by seating them in wheelchairs, in public squares, mosques, major shopping centers, popular markets, and even on highways, disregarding their right to live in an environment that provides them with protection and human dignity.

Key words: persons with special needs, begging, empowerment of persons with special needs, exploitation of persons with disabilities.

Introduction:

Promoting human rights in general, and the rights of persons with disabilities in particular is more than a necessity. It is a prerequisite for supporting human rights, sustainable development, peace, and security, as it is pivotal to achieving the Sustainable Development Plan, where commitment to embodying the rights of persons with disabilities is not just a matter of justice, but rather an investment in a shared future, as society is in dire need of all its human energies to invest in them and achieve the desired economic development.

Persons with disabilities face numerous problems in their daily lives, particularly in Arab societies, due to the lack of financial resources to provide them with adequate care, except for some Gulf countries, however, this life-long suffering is not solely due to the disability itself, but also primarily to the poor treatment they receive from their family members, in addition to the society's condescending attitude toward them, the lack of respect for their humanity, and the lack of consideration for their privacy and problems, as well as the failure to adapt to them, as there are obstacles, barriers, and restrictions that prevent persons with disabilities from participating in various life activities and events.

Hence, the importance of integrating persons with disabilities into families and society becomes clear. Supporting them is achieved through the application of legal provisions to daily life, and by periodically updating them to improve their conditions; in this context, Law No. 05-01 on the Protection and Promotion of Persons with disabilities was issued.

The issuance of this law reflects Algeria's interest in strengthening legal protection for persons with disabilities, where the state seeks, within the framework of preparing and implementing its sectoral policies, to enhance the dignity and independence of persons with disabilities, including the freedom to make their own choices, non-discrimination based on disability, respect for differences, and acceptance of these people as an integral part of Algerian society, as well as facilitating the movement and access of persons with disabilities to various public facilities and spaces, media, communication, transportation, and new technologies, as Law 25-01 includes many new measures that allow for the strengthening of the integration of persons with disabilities into the family and society, including:

- Persons with disabilities benefit from free transportation, or reduced fares, on public land, sea, and rail transport.
- Persons with disabilities, who have a 100% disability rate, benefit from reduced fares on domestic public air transport, conversely, this provision indicates that companions of persons with disabilities also benefit from reduced fares on domestic public air transport.
- Persons with disabilities, who have a 100% disability rate, are granted discounts on rent and purchase of social housing.
- Employers and employers are required to allocate 1% of their jobs to persons with disabilities, and if this is not possible, the employer or employee must pay an annual financial contribution to the public treasury to develop and promote professional integration programs targeting persons with disabilities.
- Adapting the architectural layout of shops, headquarters, and residential buildings to enable easy access for persons with disabilities, including schools, universities, training centers, religious, health, and administrative institutions, and places designated for social, sports, economic, recreational, and cultural activities, as well as facilitate access to public services

and facilities, public and tourist places, and facilitate the use of public transportation and media and communication.

- Allocating 5% of public parking spaces to persons with disabilities and their companions, in addition to granting priority access to public and private administrations and institutions to persons with disabilities.

This study highlights the criminalization of the exploitation of persons with disabilities for begging, in light of the provisions of Law No. 25-01.

-Importance of the Study:

The study derives its importance from its topic relating to an important segment of society, namely persons with special needs (those with disabilities), which has received increasing attention from researchers and governmental and non-governmental human rights organizations at the national, regional, and international levels.

-Law 25-01 is the first law issued in 2025, merits study by highlighting the most important new provisions and procedures enacted by the Algerian legislature to enhance legal protection for persons with disabilities.

Study Objectives:

- To identify the new developments in Law 25-01, particularly those related to criminalizing the exploitation of persons with disabilities in begging.
- To identify the reasons that prompted the Algerian legislature to criminalize the exploitation of persons with disabilities in begging.

Methodology:

We adopted a descriptive and analytical approach, collecting scientific material and data related to the exploitation of persons with disabilities in begging from various sources, then analyzing them appropriately and drawing conclusions.

Study Problem:

From the above, the features of our problem are revealed through the following central question:

« How did Algerian lawmakers address the widespread phenomenon of the exploitation of persons with disabilities in begging in Algerian society? »

To answer this question, we followed the following plan:

- Introduction
- First Requirement: Definition of the study's objectives
- Second Requirement: The crime of exploiting persons with disabilities for begging
- Conclusion

1. Defining the Study Interests: (Persons with disabilities, Begging)

1.1. Defining Persons with disabilities :

Perhaps the most important feature of Law No. 25-01 is its name, as the legislator amended the name in the repealed Law No. 09-02 to: "..., Protecting and Advancing Persons with disabilities", this new name, in our view, represents a qualitative leap towards improving the legal formulation of legal texts, and is a remarkable achievement for the Algerian legislator.

Regarding the term "Persons with disabilities ", there are attempts to replace the term "disabled" with: "people with needs," "people with determination," or "people with special educational needs", as there are several attempts to define "Persons with disabilities", the most important of which are:

There are many technical definitions of "Persons with disabilities " ("persons with special needs), the most important of which are:

- "It is a condition of neurological, skeletal, or muscular weakness, and a chronic medical condition that requires therapeutic and educational intervention so that the physically disabled can benefit, as this disability includes cerebral palsy, spinal disorders, muscular dystrophy, multiple sclerosis, and epilepsy, these are conditions of disability that limit individuals' ability to use their bodies in a normal and flexible manner, negatively impacting their participation in one or more of their daily activities"¹, where we note that this definition focuses on the type of disability that afflicts a person without considering its causes.
- "Cases of individuals who suffer from a defect in their motor ability or motor activity, such that this defect affects aspects of their mental, social, and emotional development, rendering them unable to compete with others, as these disabilities vary in severity; some are congenital, while others are acquired due to wars, natural disasters, or work-related injuries, where these individuals may suffer from the loss of one or more limbs, or cannot move one or more limbs"²; Unlike the first definition, this definition focuses on the causes of disability, which can be divided into two categories: genetic, or acquired due to wars or natural disasters.
- "Individuals who deviate from the normal or average level in any characteristic, or one or more aspects of personality, to the extent that they require special services, different from those provided to their normal peers, to help them achieve their maximum potential for development and adjustment"³.
- The World Health Organization defined disability as: "A condition of limitation or defect in physical or mental abilities, due to genetic or environmental factors, which prevents an individual from learning certain activities normally performed by an able-bodied person of a similar age"⁴.
- The International Labor Organization defines a disabled person as: "Any person whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced as a result of a legally recognized physical or mental impairment"⁵.

The Algerian legislator defined persons with disabilities as: "Any normal person, regardless of age or gender, who suffers from a permanent disability or impairment, whether of a hereditary, congenital, or acquired nature, that limits their ability to engage in one or more essential activities in their daily personal and social life, as a result of impairment of their mental, intellectual, motor, organic, or sensory functions, as this impairment may prevent them, when interacting with various barriers, from fully participating in society on an equal footing with other persons"⁶.

It is clear from the previous definitions that, compared to other people of sound mind, persons with disabilities will exhibit a total or partial deficiency in their limbs, minds, or senses, due to a genetic or acquired environmental factor, therefore they have different abilities and potential than people of sound mind in terms of education, work, and the acquisition of skills and experience because they lack certain needs.

Types of Disability for Persons with special needs:

The types of disability vary from one individual to another, as these types can be classified as follows⁷:

- Mental disability:

This is a deficiency in an individual's mental functions, appearing during the developmental period before the age of eighteen. It is characterized by mental performance that is significantly below average.

- Physical and health disability:

This includes various types of disability, or severe and chronic physical injuries affecting the central nervous system, bones, muscles, or health condition, resulting in limited motor activity, physical endurance, agility, and independent mobility.

- Visual disability:

This refers to the total or partial loss of vision, which limits a person's ability to use their sense of sight functionally to receive information, acquire knowledge, and engage in learning and daily life.

- Hearing impairment:

A complete or partial loss of hearing, whether present from birth, before acquiring speech and language, or immediately after learning speech and language. This limitation limits a person's ability to use their sense of hearing to communicate with others or process linguistic information through hearing, with or without the use of hearing aids.

In addition to these types, there can be what is known as dual or multiple disabilities, which occur when a person suffers from more than one mental and physical disability simultaneously, or multiple sensory disabilities, such as those affecting their sight, hearing, and speech.

In concluding our discussion of the types of disabilities, it is worth noting that each type of disability, in which the disabled person (or person with special needs) requires consideration for their individual needs and understanding of their needs, which requires special care from their family and community, with love and dedication to assisting out of a sense of humanity, so that we can help them integrate into the family and society without difficulty.

1.2 Definition of Begging:

There are many technical definitions of begging, the most important of which are:

- "Asking for alms from individuals on public roads"⁸, this definition limits begging to public roads only, while there are many places where begging is practiced.

- "The practice of soliciting money from people by any means, without justification, such that begging becomes a common profession and trade, using various means to obtain money by appealing to people's sympathy while taking this money and benefits"⁹.

- "Insisting on begging or appearing poor and humiliated before others, to elicit their sympathy and mercy, with the intent of obtaining money, either directly or indirectly, by offering trivial goods, carrying any debt-bearing documents, carrying children, wearing shabby clothes, displaying or falsely claiming a disability, or engaging in any trivial acts"¹⁰.

Based on the above, it can be said that begging is: "A person soliciting money, goods, merchandise, medicine, or various services from the general public, whether directly or indirectly, in person (traditional begging) or via the internet and social media (digital begging)".

1.3 The Algerian legislator's position on the phenomenon of begging in the Penal Code:

The Algerian legislator criminalized begging and prescribed a penalty for it, stating: "Anyone who habitually practices begging in any place, despite having the means of subsistence or being able to obtain them through work or any other legitimate means, shall be punished by imprisonment for a period of one to six months"¹¹.

The law emphasized the criminalization of begging involving minors and increased the penalty, stating: "Anyone who begs with a minor under the age of 18 or exposes them to begging shall be punished with imprisonment for a period of six (06) months to two (02) years, where the penalty shall be doubled if the perpetrator is one of the minor's relatives or any person with authority over the minor"¹².

2. The crime of exploiting persons with disabilities for begging:

Countries around the world are striving to empower persons with disabilities to exercise their established rights in all aspects of life. Algeria, like other countries around the world, has prioritized the special needs category by strengthening its legal arsenal to protect persons with disabilities and criminalizing any act that harms them, particularly their exploitation for begging, where we will elaborate on this heinous crime in the first section, which addresses the elements of this crime, while the second section addresses the prescribed penalties.

2.1 Elements of the Crime of Exploiting Persons with disabilities for Begging:

The crime of exploiting persons with disabilities for begging, like all crimes, has three elements:

2.1.1 The legal element: A crime, in the legal sense, is any act or omission for which the law prescribes a penalty, as the Algerian legislator has established the principle of legality by stating: "There is no crime, no punishment, and no security measures without law"¹³.

Therefore, the existence of any crime and the imposition of punishment for it are due to the existence of a legal text that criminalizes the act and imposes an appropriate punishment on the perpetrator, as the presence of the legal element is very important in any crime, and without it, there is no crime, and no punishment for any crime is possible unless the legal element is present.

As for the crime of exploiting persons with disabilities, the Algerian legislature criminalized it under Article 48 of Law 25-01, which stipulates: "Anyone who exploits a person with special needs in any way for begging shall be punished by imprisonment from one (01) to three (03) years and a fine of 100,000 DZD to 300,000 DZD.

If the perpetrator is an ascendant or descendant of the person with special needs or any person with authority over them, the penalty shall be imprisonment from two (2) to five (5) years and a fine of 200,000 DZD to 500,000 DZD, and if the perpetrator uses the media and communication media to commit the crime, they shall be punished with the same penalty mentioned in paragraph 2 above.

The penalty shall be imprisonment from two (5) to five (10) years, and a fine from 500,000 DZD to 1,000,000 DZD if the crime is committed within the framework of an organized criminal group¹⁴.

2.1.2 The material element: The material element concerns the right to something protected by law, as it refers to any assault or violation against another person, meaning material and tangible things, such as the loss of a life after being shot, where the material element consists of three elements:

- **The act:** This is the criminal behavior of exploiting persons with disabilities to beg in any way, such as when a person, whether a relative or a foreigner, accompanies a person with disabilities to exploit them for begging in public places and facilities, shopping centers, and popular markets. This can also include using the media, communication, and social media platforms, through a post or live broadcast, to solicit people's sympathy and help, and attract the largest possible number of views.
- **The outcome:** This is the reaction resulting from the action and its subsequent consequences, such as disrupting the atmosphere, harassing citizens, and embarrassing them, however, there will undoubtedly be sympathy and a response from the public to the call for begging, and they will provide financial assistance to the person with special needs exploited by the perpetrator.
- **Causal relationship:** This is the link between the action and the outcome. When all of these elements are present, the material element of the crime of exploiting persons with disabilities for begging is established.

2.1.3 - The moral element:

This is the presence of a sinful will and criminal intent on the part of the perpetrator to cause a negative outcome, with knowledge of the actual crimes and consequences, nevertheless, the perpetrator committed the act to cause a specific outcome, as the presence of the moral element implies the direct presence of the crime itself. The basic principle is to treat persons with disabilities humanely and preserve their dignity, rather than exploiting them for unlawful gain and exposing them to danger.

2.2 Penalties for the Crime of Exploiting Persons with disabilities in Begging:

The Algerian legislator devoted Chapter 8 of Law 25-01 to penal provisions (this chapter includes seven articles 44-50), criminalizing the phenomenon of exploiting persons with disabilities in Article 48 of the aforementioned law, which consists of four paragraphs, as upon examining the text of the article, we find that the Algerian legislator considers the crime of exploiting persons with disabilities in begging a misdemeanor, and a felony if committed within the framework of an organized criminal group:

- The crime of exploiting persons with disabilities in begging as a misdemeanor:

The Algerian legislator stipulated in the first paragraph of Article 48 that: "Anyone who exploits a person with special needs in any way in begging shall be punished by imprisonment for a period of one (01) to three (03) years, and a fine of 100,000 DZD to 300,000 DZD"¹⁵.

The Algerian legislator was strict and increased the prison sentence and fine compared to the provisions of the article of the Penal Code, given that persons with disabilities are a vulnerable and sensitive group, which prompted the legislator to increase the custodial sentence from one to three years and the fine from 100,000 DZD to 300,000 DZD.

The second paragraph, however, was made an aggravating circumstance if the person exploiting persons with disabilities to beg is a relative, stating: "...and if the perpetrator is an ascendant or descendant of the person with special needs or any person with authority over them, the penalty shall be imprisonment from two (02) to five (05) years and a fine from 200,000 DZD to 500,000 DZD"¹⁶.

As for the third paragraph, the Algerian legislator has addressed a modern means that the perpetrator may resort to in exploiting persons with special needs, which is the media and communication, such as communicating with television or radio programs dedicated to doing good and helping the needy, and presenting the case of Persons with disabilities to gain the sympathy of viewers from inside and outside the country, or using various social networking sites to promote his publication, or conducting a live broadcast to attract the most significant number of viewers, as the Algerian legislator stipulated: "..., and if the perpetrator uses the media and communication to commit the crime, he shall be punished with the same penalty mentioned in paragraph 2 above," meaning that the use of the media and communication to exploit Persons with disabilities is also considered aggravated assault, as is the case with a relative exploiting persons with disabilities in begging and earning money in an illegal manner¹⁷.

- The crime of exploiting persons with disabilities for begging as a felony:

In the fourth and final paragraph of Article 48 of Law No. 25-01, the Algerian legislator tightened the language and made the crime of exploiting persons with disabilities for begging a felony, stipulating that: "...the penalty shall be imprisonment for a period of two (5) to five (10) years, and a fine of 500,000 DZD to 1,000,000 DZD if the crime is committed within the framework of an organized criminal group"¹⁸.

It is worth noting that the Algerian legislator has established the penalty for attempted crimes in all crimes stipulated in Law No. 25-01, stipulating that: "Attempts to commit the crimes stipulated in this law shall be punishable following applicable legislation"¹⁹.

Regarding the penalty for attempting a crime, the Algerian legislature considers an attempt to commit a felony to be the same as a felony itself, and punishes it with the same penalties, as the law stipulates that: "Any attempt to commit a felony that begins with the commencement of execution or with unambiguous acts that directly lead to its commission shall be considered the same as the felony itself, even if it is halted or its effect is only diminished as a result of circumstances independent of the perpetrator's will, even if the intended goal cannot be achieved due to a material circumstance unknown to the perpetrator"²⁰.

The crime of exploiting persons with disabilities for begging, if it is classified as a felony according to Article 48, paragraph 4, mentioned above, the attempt shall be punishable regardless of whether the result is achieved, while the attempt to commit a misdemeanor, it is only punishable by explicit legal text, and the penalty for an attempt shall be the same as for a completed crime, as the law stipulates that: "An attempt to commit a misdemeanor shall only be punishable by explicit legal text..."²¹.

As for the crime of exploiting persons with disabilities for begging, if it is classified as a misdemeanor according to Article 48, paragraphs 1, 2, and 3, mentioned above, the attempt is punishable regardless of whether the result is achieved, as the Algerian legislature explicitly stipulates this in Article 49 of Law No. 25-01 mentioned above, where this rule, established by the Algerian legislature in Articles 30 and 31 of the Penal Code, can be interpreted as meaning that if the crime is serious, the attempt is also serious and deserves punishment, and if the seriousness of the crime is less serious, the seriousness of the attempt is less serious, accordingly, felonies are serious crimes, and therefore, the attempt is punishable, while misdemeanors are of a lesser degree, and therefore, the attempt is only punishable according to a specific provision, and as for violations, the attempt is not punishable at all.

In this regard, judges may sentence perpetrators of crimes stipulated in Law No. 25-01, including the crime of exploiting persons with disabilities, to additional penalties, as the Algerian legislature stipulates that: "The competent judicial authorities shall determine the security period in the event of conviction for the crimes stipulated in this law, and may also apply the provisions of Article 14 of the Penal Code"²². Returning to the text of Article 14 of the Penal Code, which states: "The court may, when ruling on a misdemeanor, and in cases specified by law, prohibit the convicted person from exercising one or more of the civil rights stipulated in Article 9 bis 1, for a period not exceeding five (5) years, where this penalty shall take effect from the date of expiry of the custodial sentence or the release of the convicted person"²³.

Deprivation of the exercise of national, civil, and family rights includes²⁴:

- Removal or exclusion from all public functions and positions related to the crime.
- Deprivation of the right to vote, to be elected, and to hold any honorary title.
- Ineligibility to serve as a sworn assistant or expert, as a witness to any contract, or as a witness before a court, except as an evidentiary witness.
- Deprivation of the right to bear arms, to teach, to manage a school, or to serve in an educational institution as a professor, instructor, or supervisor.
- Ineligibility to serve as a guardian or trustee.
- Forfeiture of all or part of guardianship rights.

In the event of a criminal penalty, the judge must order the deprivation of one or more of the above rights for a maximum period of ten (10) years, effective from the date of completion of the original sentence or the release of the convict.

3. Conclusion:

We conclude this study, which discussed "the crime of exploiting persons with disabilities in begging in light of the provisions of Law No. 25-01," by emphasizing that this crime is not merely a legal violation, but rather a reflection of profound social and economic

crises that require a comprehensive response, as it became clear that the law provided a deterrent framework for holding exploiters accountable, but the greatest challenge lies in the effectiveness of implementation and addressing the root causes, therefore, the most urgent solution remains the integration of efforts between government ministries and civil society, while directing resources to enhance collective awareness, improve support services for persons with disabilities, and develop oversight mechanisms to ensure the fair and effective implementation of the law, as justice will not be complete by combining legal protection with ensuring social security for this group, so that their dignity and future do not remain subject to the exploitation of others.

3.1 Results:

- The issuance of Law No. 25-01, with its quality formulation and the new developments it introduced for the benefit of persons with disabilities, reflects Algeria's commitment to this group and its commitment to empowering them to exercise their civil, political, economic, and social rights and providing them with the necessary legal protection.
- The Algerian legislator was the first to change the name of Law No. 25-01: "Protection and Advancement of Persons with Disabilities", as the most common term was "disabled", more recently, the term "persons with special needs" appeared, followed by the term "people of determination"; In this context, we call for the change and refinement of this term at the level of research, studies, international and regional legal texts, and national legislation, following the example of the Algerian legislator, because the words "disability" and "disabled" are harsh in their connotations.
- The Algerian legislator criminalized the exploitation of persons with disabilities for begging under Article 48 of Law 25-01, concerning the Protection and Advancement of Persons with Disabilities.
- The crime of exploiting persons with disabilities in begging may be classified in some cases as a misdemeanor, and as a felony if committed within the framework of an organized criminal group.
- The Algerian legislature has established penalties for attempted all crimes stipulated in Law No. 25-01, including the crime of exploiting persons with disabilities in begging.
- A judge may sentence perpetrators of crimes of exploiting persons with disabilities in begging for additional penalties, following applicable legislation.

3.2 Recommendations:

- Adding a fifth paragraph to Article 48 of Law 25-01, criminalizing any ordinary person who deceives others into believing they belong to the category of persons with special needs, for example by using a wheelchair, to beg and earn money by appealing to people's sympathy.
- We urge the Algerian legislator to criminalize the exploitation of persons with special needs in the promotion of drugs and hallucinogenic pills, given their prevalence in Algerian society.
- Raising awareness among the general public of the importance of providing material and moral assistance to persons with special needs, as this is at the core of our true religion, which emphasizes social solidarity.

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