



THE CRIMINALIZATION OF DISCRIMINATION AND HATE SPEECH IN ALGERIAN LEGISLATION AS PENAL PROTECTION OF HUMAN DIGNITY

Ismahane ABDERREZAK*

University of Algiers, Faculty of Law

i.abderrezak@univ-algze.dz

Laboratory of Criminal sciences

Send Article Date: 23-02-2025

Date of acceptance of the article: 30-05-2025

Abstract:

Law N° 20-05, promulgated on April 28, 2020, was introduced to combat any conduct that undermines the dignity of individuals, fosters discrimination among them, or propagates hate speech that degrades their humanity. The law imposes stringent sanctions on perpetrators of such offenses, marking an additional step towards reinforcing the status of every individual and safeguarding their right to live in peace and security within society. This research paper aims to identify the various forms through which these offenses are committed, distinguishing between acts constituting discrimination and those qualifying as hate speech, while also clarifying the legal provisions governing such conduct. The study entails an analytical examination of the relevant legal texts to extract the penalties stipulated against offenders, with the ultimate goal of deterring such behavior and fulfilling the law's objective of establishing penal protection for human dignity—a right to which every citizen, indeed every human being, is entitled. The paper concludes with a summary of the findings obtained from the recherche.

key words: Crime; Discrimination; Hate Speech; Law; Penalty.

Introduction:

Human dignity, in any society, is an inherent right that ensures individuals are treated ethically, with respect for their intrinsic worth and value-regardless of their color, language, gender, or

* Ismahane ABDERREZAK

social status, whether poor or wealthy. However, numerous violations of human dignity persist, both internationally and within the national context of each state. These violations take various forms in reality, prompting human rights organizations, Amnesty International, and the United Nations to engage with governments to incorporate the principles agreed upon in international covenants and treaties into their domestic legislation, with the aim of achieving justice. Dignity has been recognized as a fundamental and inalienable right shared equally by all human beings, without distinction based on race, color, religion, gender, or language. Any infringement upon it, or any of its underlying principles, is deemed a crime punishable by law.

The Algerian legislator reaffirmed this principle in the Constitution, particularly in the eighth paragraph of the preamble, which addresses hate speech and all forms of discrimination. It emphasizes the nation's resolve to safeguard Algeria from discord, violence, extremism, hate speech, and discrimination. This is to be achieved by consolidating the country's spiritual and cultural values, founded on dialogue, reconciliation, and fraternity, within the framework of respect for the Constitution and the laws of the Republic.

Moreover, other provisions within the Constitution address this subject, either directly or indirectly. Notably, Article 54, which pertains to the media, enshrines the freedom of expression, press, and publication. However, it simultaneously prohibits any actions that harm individuals or groups, including those that infringe upon an individual's dignity or violate their rights.

The same approach was adopted by the Algerian legislator through the establishment of penal protection for human dignity in Law No. 20-05, issued on April 28, 2020, concerning the prevention and suppression of discrimination and hate speech.

This law is structured into seven chapters, covering a range of aspects. It begins with general provisions defining its scope and fundamental principles, followed by sections addressing



preventive measures and mechanisms, as well as the protection of victims of discrimination and hate speech. It further includes procedural provisions and concludes with penal provisions. Through an examination of these provisions, the Algerian legislator's firm stance against assaults on human dignity—whether in the form of discrimination or hate speech—becomes evident. The law upholds the dignity and rights of every Algerian citizen without distinction based on gender, race, color, lineage, national or ethnic origin, language, geographic affiliation, disability, or health condition.

Study Problem:

This context raises the following key question:

- How are the provisions governing discrimination and hate speech offenses structured?
- When is each offense established in the eyes of the legislator?
- And what penalties are prescribed under Law No. 20-05?

Understanding the penal provisions related to both discrimination and hate speech necessitates a separate examination of each offense. This involves analyzing the legal texts governing their regulation, identifying the constituent elements of each crime, and assessing the penalties prescribed.

Study Structure:

The study will follow a three-pronged structure as outlined below:

- First Section: Examination of the Legal Provisions Governing the Crime of Discrimination;
- Second Section: Examination of the Legal Provisions Governing the Crime of Hate Speech;

Third Section : Analysis of the Penalties Imposed for the Commission of Discrimination and Hate Speech Offenses..

SECTION I: Legal Provisions Governing the Crime of Discrimination

Legal scholarship defines "discrimination" as a form of racial practice, considered among the least severe manifestations of such practices—some of which may escalate to conflict and genocide. Prominent forms of discrimination include the denial of access to societal opportunities and the use of derogatory, almost aggressive, language (Law 2015, 08).

Some legal experts have linked the term "discrimination" to the qualifier "racial," defining "racial discrimination" as any distinction, exclusion, or preference based on gender, color, lineage, national origin, ethnicity, religion, or language (Mohamed 1986, 06).

In contrast, the Algerian legislator provided a specific legal definition of discrimination in Article 2 of Law No. 20-05. It is defined as:

"Any distinction, exclusion, restriction, or preference based on gender, race, color, lineage, national or ethnic origin, language, geographic affiliation, disability, or health condition, which aims to or results in obstructing, impairing, or undermining the recognition, enjoyment, or exercise—on an equal footing—of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life."

- Discrimination Based on Gender: Commonly referred to as sexism, this term denotes gender bias and discrimination rooted in an individual's sex, whether male or female. It involves the perception that one gender is superior to the other, or the manifestation of hostility toward women (misogyny) or men (misandry) (Fardiya 2021, 127).
- Discrimination Based on Race: Known as racism, this form of discrimination is founded on the belief that inherent, hereditary differences exist between groups of people based on their racial or ethnic background. It results in the treatment of one group as inherently superior to



another, which is subjected to inferiority, degradation, or contempt. It closely resembles discrimination based on national or ethnic origin, which is similarly grounded in shared ancestry, cultural heritage, societal background, or national identity (Fardiya 2021, 127).

- Geographical Affiliation: The term's definition is provided by the legislator in Article 2, which states: "Affiliation with a specific region or area within the national territory."
- Discrimination Based on Language: Also referred to as linguistic bias, this entails the unfair treatment of an individual solely on the basis of their language. It may extend to aspects such as native language, other linguistic characteristics like accent, speech style, or even restricting a person from using more than one language (Fardiya 2021, 127).
- Disability: Defined in Article 2 of Law No. 02-09 on the Protection and Promotion of Persons with Disabilities, a disabled person is described as: "Any individual, regardless of age or gender, who suffers from one or more disabilities, whether hereditary, congenital, or acquired, which limit their ability to perform one or several fundamental activities in their personal and social daily life due to an impairment of mental, motor, sensory, or organic functions (Law No. 02-09 2002)."

Scope of Discrimination : This encompasses all matters related to human rights and fundamental freedoms, which have been globally protected since the Universal Declaration of Human Rights and constitutionally safeguarded in Algeria under Articles 34 to 77. In these provisions, the legislator outlined various rights that the state guarantees under Article 35, including political rights such as the right to nationality, the right to equality, freedom of information and press, the right to vote and stand for election, as well as economic rights like freedom of trade, investment, entrepreneurship, and the right to education, academic freedom, and scientific research. Any violation of these

rights can take various forms of criminal offenses, among them the crime of discrimination, which will be examined through its material and moral elements.

First Requirement: The Material Element

The material element of the crime of discrimination consists of the conduct carried out by an individual that constitutes a discriminatory act, along with the resulting criminal outcome

Paragraph1: Conduct or Material Act

The crime of discrimination may take the form of either a positive act or an omission (failure to act).

It encompasses any distinction, exclusion, restriction, or preference based on gender, with the aim of violating the principle of equality in the exercise of fundamental rights and freedoms. An example of a positive act would be a public official expelling a citizen from a public service on the grounds of their racial affiliation. As for omission, which is more common in practice, it could involve refusing to provide medical treatment to a patient based on their gender, color, or affiliation, or rejecting the application of an otherwise qualified individual solely because of their language or geographic origin (Bouabdallah 2008, 122).

It is important to note that the legislator introduced exceptions to certain discriminatory acts in Article 3 of Law No. 20-05, specifically excluding cases where discrimination is justified by:

- Health conditions, in the context of procedures aimed at preventing the risk of death, safeguarding physical integrity, preventing incapacity for work, or protecting against disability, as well as providing insurance coverage against such risks.
- Health Condition and/or Disability: When the refusal to employ an individual is based on medically verified incapacity to work, in accordance with the provisions of labor legislation or the general statute governing public service.



- Gender Distinction: In cases where, under applicable legislation, belonging to a specific gender is an essential requirement for performing a particular job or professional activity.
- Nationality: When nationality is a prerequisite for employment, as stipulated by the legislation in force.

However, while the legislator has justified the aforementioned conduct and excluded it from the scope of criminalization, Article 4 of the same law explicitly prohibits invoking freedom of opinion and expression as a justification for discrimination or as a basis for hate speech.

Paragraph 2: The Result

The result consists of obstructing or hindering the enjoyment and exercise of human rights and fundamental freedoms on an equal footing among all individuals. Examples include excluding qualified individuals from employment opportunities, preventing them from participating in a sporting or academic competition that is critical to their athletic or professional future despite their eligibility, or barring a candidate from running for a high-ranking electoral position for which they have invested time, effort, and financial resources, and fulfilled all nomination requirements. Such individuals suffer harm by being deprived of their right, delayed in achieving long-awaited successes, and hindered from realizing their goals. This constitutes the crime of discrimination. Discrimination is classified as a material offense rather than a formal one. Consequently, there must be a causal link between the act and the result for the conduct to be attributable to the perpetrator, making them liable for it (Bouabdallah 2008, 122). Additionally, attempting to commit this offense is punishable, reflecting the legislator's intent to combat discrimination at its inception and prevent its escalation into more severe consequences, such as endangering lives or leading to acts of genocide.

Second Requirement: The Mental Element

Discrimination is an intentional offense that requires the presence of general intent, which consists of knowledge and will. The perpetrator must be aware of their conduct, which involves differentiating between individuals and favoring one over another. The offender knowingly engages in an act that excludes, prefers, or marginalizes a person based on race, gender, or other grounds, with the intention of depriving or obstructing the first individual's enjoyment or exercise of their rights on an equal basis with others (Obeid 2000, 63).

reface on the second requirement and the issues to be addressed.

SECTION II: The Crime of Hate Speech

The legislator defines hate speech in Article 2 as:

"Any form of expression that disseminates, promotes, or justifies discrimination, as well as any expression that involves contempt, insult, hostility, hatred, or violence directed at an individual or a group of individuals based on gender, race, color, lineage, national or ethnic origin, language, geographic affiliation, disability, or health condition."

It is notable that the crime of hate speech encompasses two forms:

- Expressions intended to discriminate between individuals.
- Expressions aimed at inciting contempt, hatred, or violence against an individual or a group of individuals based on any of the grounds specified in the legal provision above (Fardiya 2021, 128).

First Requirement: The Material Element

Hate speech is classified as a formal offense (risk-based crime), meaning that it does not require a specific harmful result to occur. The offense is established upon the mere commission of the criminal act, regardless of whether any actual harm is caused.



The criminal act in hate speech consists of any form of expression, whether it be:

- Verbal statements (spoken expression),
- Written content,
- Drawings,
- Gestures,
- Images,
- Singing,
- Insults,
- Hostility,
- Hatred, or
- Violence.

Such expressions must be directed at an individual or a specific group of individuals based on one of the grounds specified in Article 2, Paragraph 1 of Law No. 20-05—such as gender, race, color, language, geographic affiliation, and others.

It is evident that hate speech involves positive conduct, requiring an active act, unlike the crime of discrimination, which is often characterized by omission (failure to act).

The legislator punishes the attempt to commit this offense, as stipulated in Article 39 of Law No. 20-05.

Furthermore, freedom of opinion and expression may not be invoked as a defense to justify hate speech, in accordance with Article 4 of the same law.

Second Requirement: The Mental Element

The commission of this offense requires criminal intent, comprising knowledge and will. The perpetrator must be aware that their form of expression is intended to discriminate against individuals based on differences in race, gender, color, or other grounds. Alternatively, the expression may be aimed at showing contempt, insulting, or inciting violence against a person.

SECTION III : Penalties for the Crimes of Discrimination and Hate Speech

As with all criminal offenses, penalties vary in severity and are divided into principal penalties and supplementary penalties. Additionally, aggravating circumstances may lead to stricter sanctions. Accordingly, this section will address:

- Principal penalties and aggravating circumstances, as well as exemptions and mitigating factors.
- Supplementary penalties.

First Requirement: Principal Penalties

This part will examine the primary sanctions, aggravating circumstances, recidivism, and grounds for exemption from punishment.

- Principal Penalty for the Basic Forms of Discrimination and Hate Speech Misdemeanors:
- According to Article 30 of Law No. 20-05, the basic forms of discrimination and hate speech are punishable by:
- Imprisonment for a term ranging from 6 months to 3 years, and
- A fine between 60,000 DZD and 300,000 DZD.

Furthermore, any person who incites the commission of discrimination or hate speech, organizes, praises, or engages in propaganda supporting such acts—unless the act constitutes a more serious offense punishable by a harsher penalty—shall be subject to:

- Imprisonment for a term ranging from 1 year to 3 years, and
- A fine between 100,000 DZD and 300,000 DZD.
- Any person who establishes or participates in an association or agreement formed for the purpose of preparing for the commission of one or more crimes of discrimination or hate speech shall be punished with the penalties prescribed for the offense itself. The crime is



considered complete upon the mere formation of a joint plan to carry out the act, in accordance with Article 36.

- A legal entity that commits acts of discrimination or hate speech is punished under Article 38 in accordance with the penalties provided in the Penal Code, specifically in Chapter One bis (introduced by Law No. 04-15), starting from Article 18 bis (amended by Law No. 06-23). Fines constitute the principal penalty imposed on legal entities for felonies and misdemeanors in general.

As for supplementary penalties (Article 18 of Paragraph 2 of the Penal Code n.d.), one or more of the following sanctions may be applied:

- Dissolution of the legal entity,
- Closure of the establishment or one of its branches,
- Exclusion from public procurement contracts,
- Prohibition from engaging in one or more professional or social activities, either directly or indirectly,
- Confiscation of the object used in the commission of the crime or resulting from it,

Publication or display of the conviction ruling.

Second Requirement : Aggravating Circumstances

They are as follows

Paragraph1: Aggravation of Penalties

According to Article 31 of the same law, penalties are increased to imprisonment from 2 to 5 years and a fine ranging from 200,000 DZD to 500,000 DZD when certain factors relating to the victim's vulnerability, the number of offenders, or the use of information and communication technologies, which facilitate the crime and amplify its spread, are present. The legislator specified the following cases:

- If the victim is a child, or the victim's condition facilitated the commission of the crime, such as being ill, disabled, or suffering from a physical or mental impairment.

- If the perpetrator holds legal or actual authority over the victim, or exploits their professional position to commit the crime.
- If multiple perpetrators are involved, meaning the crime is committed by a group of two or more individuals, regardless of whether they are principal offenders or accomplices.
- If information and communication technologies are used to perpetrate the crime, enhancing its reach and impact.

Furthermore, Article 32 of Law No. 20-05 imposes harsher penalties when hate speech includes incitement to violence, raising the punishment to imprisonment from 3 to 7 years.

Paragraph 2 : Specific Forms of Discrimination and Hate Speech with Enhanced Penalties

There are certain forms of discrimination and hate speech for which the legislator prescribed stricter penalties compared to the basic offenses discussed earlier. Attempting to commit these offenses is also punishable. These cases and their aggravated penalties, as provided in the legal texts, are as follows:

- **Public Incitement to Discrimination and Hate Speech:** According to Paragraph 2 of Article 30, any person who publicly incites the commission of discrimination or hate speech, organizes, praises, or engages in propaganda supporting such acts, shall be punished with imprisonment from 1 to 3 years and a fine ranging from 100,000 DZD to 300,000 DZD, unless the act constitutes a more serious offense punishable by a harsher penalty under the law.
- If hate speech includes incitement to violence, the penalty is increased to imprisonment from 3 to 7 years and a fine ranging from 300,000 DZD to 700,000 DZD.
- Article 33 stipulates that anyone who praises, encourages, or finances by any means the activities, associations, organizations, or groups that promote discrimination and



hatred shall be punished with imprisonment from 2 to 5 years.

- Recognizing technological advancements and the critical role that modern technologies play in facilitating the commission, promotion, and widespread dissemination of crimes, the legislator has imposed severe penalties in Article 34 on anyone who creates, manages, or supervises a website dedicated to publishing information aimed at promoting any program, ideas, news, images, or illustrations likely to incite discrimination and hatred within society.

The penalty for this offense is imprisonment from 5 to 10 years and a fine ranging from 5,000,000 DZD to 10,000,000 DZD, without prejudice to more severe penalties applicable under other laws.

- Article 35 imposes imprisonment from 2 to 5 years and a fine ranging from 200,000 DZD to 500,000 DZD on any person who produces, manufactures, sells, offers for sale, or circulates products, goods, publications, recordings, films, tapes, discs, software, or any other medium containing any form of expression likely to provoke discrimination and hatred within society.

Third Requirement: Recidivism

Penalties prescribed under the Anti-Discrimination and Hate Speech Law are doubled in cases of recidivism.

Recidivism occurs when an individual, after being convicted by a final judgment for an offense, commits the same offense again. The penalty is doubled as a result of the offender's failure to be deterred by the initial punishment.

Fourth Requirement: Grounds for Exemption from Punishment

In line with the principle of acknowledging guilt, promoting repentance, and encouraging those who have faltered and been

tempted to commit a crime to reconsider their actions, the Algerian legislator sought to combat discrimination and hate speech offenses by incentivizing offenders to promptly abandon their criminal conduct and disclose any criminal schemes before their execution, thereby preventing the crime at its inception. This approach is intended to encourage offenders to report these crimes in return for either exemption from punishment or a reduction in their penalty, depending on the speed of their withdrawal from the offense and their cooperation with authorities in exposing the perpetrators.

This principle is enshrined in Article 40, which provides that any person who has committed a discrimination or hate speech offense and, before legal proceedings are initiated, informs the administrative or judicial authorities about the crime and assists in identifying and/or apprehending the perpetrators, or reveals their identities, shall benefit from the grounds for exemption from punishment stipulated in the Penal Code.

These grounds for exemption are exhaustively defined by law, and although the crime and criminal responsibility are established, they result in either:

- Exemption from punishment, if the excuse is exonerating, or
- Mitigation of the penalty, if the excuse is mitigating (Article 52 of Paragraph 2 of the Penal Code n.d.).

However, if the offender provides such information after legal proceedings have commenced, they are eligible for a reduction of the penalty by half.

Fifth Requirement: Supplementary Penalties

- Article 41 of Law No. 20-05 grants the competent judicial authorities the power to impose one or more supplementary penalties, as provided for in Article 9 of the Penal Code, in addition to the principal penalty. These supplementary penalties consist of 13 specific sanctions.



- Article 37 of the same law (Law No. 20-05) mandates the confiscation¹ of devices, software, and tools used in the commission of one or more of the offenses stipulated therein. It further requires the closure of the website or electronic account through which the offense was committed, or blocking access to it, as well as the closure of the premises or business establishment if the offense was committed with the knowledge of the owner. All such measures shall be enforced without prejudice to the rights of third parties acting in good faith.

Conclusion:

This research paper has led to several key findings, summarized as follows:

- The Algerian legislator has criminalized acts related to discrimination and hate speech. The enactment of Law No. 20-05 was a commendable and timely initiative aimed at advancing society toward a modern civil state founded on equality and the recognition of its social, linguistic, and cultural diversity. This law seeks to preserve national identity and shield society from the perils of racism, thereby preventing the fragmentation of the state and the division of its citizens, particularly in light of the surge in hate speech and animosity witnessed in the years preceding the law's issuance.
- The relationship between human dignity, human rights, and the crimes of discrimination and hate speech is direct and evident. These offenses represent a blatant violation of fundamental human rights and freedoms, as well as an assault on human dignity. The core belief underlying such crimes is the perpetrators' perception of their superiority

¹- Article 15 of the Penal Code defines confiscation as : "the final transfer of ownership to the state of a specific property or a collection of properties, or their equivalent value when necessary."

and their denial of equal rights to others, fostering hostility and resentment that extend beyond the offender and victim, often escalating into conflicts between communities or social groups, disrupting social peace and security, and creating instability that becomes difficult to control.

- Crimes of discrimination and hate speech are precisely defined by the legislator and are perpetrated based on prejudice toward certain characteristics of the victim, which the offender deems undesirable. These characteristics vary and may include religion, race, political affiliation, culture, language, sect, disability, gender, or geographic origin.
- To tighten the legal grip on offenders, the legislator criminalized both incitement to commit these offenses and the mere attempt to commit them. Additionally, a preventive approach was adopted by encouraging offenders to report the crime before the initiation of legal proceedings. This cooperation aims to assist in identifying and apprehending the perpetrators in exchange for either exemption from punishment or a reduction in penalties, thereby transforming potential offenders into allies in combating these crimes before they spread.

Bibliography List:

- Article 18 of Paragraph 2 of the Penal Code. n.d. “the Penal Code – Details of Sentence Duration.”
- Article 52 of Paragraph 2 of the Penal Code. n.d. “The Penal Code – Details of of Sentence Duration.”
- Bouabdallah, Saada. 2008. Racial Discrimination and International Law. Alexandria: Dar Al-Nahda Al-Arabia.
- Fardiya, Mohamed bin. 2021. Criminalization and Punishment in the Law on Prevention of Discrimination and Hate Speech. Prevention of Discrimination and Hate Speech. “The 15th International Forum on Crimes of Discrimination and Hate



Speech: Reality and Challenges, 29-30 November 2021. Oued Souf: Mansour Library, Al-Quds Street.

- Law No. 02-09. 2002. "The Protection and Promotion of Persons with Disabilities."

Official Gazette, Issue No. 34. Algeria: Official Gazette of Algeria, 05 14.

- Law, Ian. 2015. Racism and Ethnicity: Global Debates, Dilemmas, Directions. 1st. Cairo: National Center for Translation.

- Mohamed, Ashour El-Sayed. 1986. Racial Discrimination. Al-Muhtadin Library.

Obeid, Hussein Ibrahim Saleh. 2000. International Crime: An Analytical and Applied Study. Cairo: Dar Al-Nahda Al-Arabia.