


The Role of the Algerian Legislator in Combating Discrimination and Hate Speech through Law 05-20

Lomri Mounir ^{1*}, Ghehiouèche Alwalid ²


¹ Faculty of Law and Political Sciences, University of M'sila, Algeria

mounir.lomri@univ-msila.dz

 <https://orcid.org/0009-0008-5003-4627>

² Faculty of Law and Political Sciences, University of M'sila, Algeria

alwalid.ghehiouèche@univ-msila.dz

 <https://orcid.org/0009-0003-6157-0699>

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Abstract:

In this study, we examine the role of the Algerian legislator in addressing the crime of discrimination and hate speech, both of which have witnessed a noticeable increase in recent times within Algerian society. The legislator took the initiative to enact Law No. 20-05, which includes a precise definition of the crimes of discrimination and hate speech, in addition to introducing a set of mechanisms to combat them. The law adopts a comprehensive approach based on two aspects: a preventive aspect that involves organizing awareness and sensitization campaigns to promote a culture of tolerance and reject hatred, and a punitive aspect that includes both principal and supplementary penalties aimed at reducing the commission of such acts and punishing their perpetrators.

Keywords: Discrimination; hate speech; society; penalties; Awareness.

** Corresponding author*

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1. INTRODUCTION

In recent years, Algeria has witnessed a marked escalation in manifestations of discrimination and hate speech, a phenomenon that has raised serious concerns, particularly through digital platforms and social media. These harmful behaviors have begun to profoundly affect the social fabric by fueling tensions, disseminating intolerance, and undermining the values of mutual respect and peaceful coexistence that have long characterized Algerian society. Whether rooted in race, religion, language, or regional affiliation, such forms of exclusion and incitement pose a direct threat to national unity and erode the foundational principles of equality and solidarity enshrined in the Algerian Constitution.

In light of the urgency and gravity of this trend, the Algerian legislator took a significant legislative step by promulgating Law No. 20/05 of 29 April 2020, aimed at preventing and combating discrimination and hate speech. This legislation seeks to establish a legal framework that criminalizes such conduct and provides for deterrent mechanisms and punitive measures against perpetrators. It reflects a firm political and legal will to preserve social peace, safeguard human dignity.

The enactment of this law comes at a time when numerous societies are facing comparable challenges, thereby reflecting Algeria's responsiveness to international human rights concerns. It further constitutes a legislative response to increasing public demands for holding accountable those who incite hatred and violence, particularly through digital and online platforms. In addition, the law introduced precise definitions and clearly formulated punitive provisions intended to eliminate the legal ambiguity that had previously hindered effective enforcement.

This legislation represents a qualitative shift within the national legal framework, marking a progressive step toward adapting the legal system to contemporary realities and emerging forms of criminal behavior.

Nevertheless, a fundamental 05-20, effectively contributed to addressing the growing phenomena of discrimination and hate speech in Algeria?

2. The Concept of the Crime of Discrimination and Hate Speech and Its Elements

Law No. 05/20 was enacted with the aim of combating this type of crime, as it includes definitions of both offenses, in addition to clarifying the essential elements that constitute each of them.

2.1. The Concept of Discrimination and Hate Speech

To achieve a precise understanding of the concepts of discrimination and hate speech, it is essential to clarify their legal and social dimensions in an interconnected and comprehensive manner:

Discrimination can be understood as any action, conduct, or policy that treats individuals or groups differently by way of exclusion, restriction, preference, or distinction. This unequal treatment is typically based on specific characteristics that may be either innate or acquired, such as race, color, gender, language, religion, political affiliation or opinion, national or social origin, property ownership, birth status, or any other condition that defines a person's identity within society.¹

Hate speech, on the other hand, is understood as any form of expression—whether verbal, written, or behavioral—that involves an attack or the use of offensive or discriminatory language towards an individual or group based on their identity, such as religion, race, nationality, color, origin, gender, or other identity-related attributes.²

This type of expression goes beyond mere personal opinion or criticism; it poses a serious threat to social peace, fuels hostility, and often serves as a precursor to violence or systematic discrimination. Hate speech can take place in both physical and digital spaces, including social media platforms, and may contribute to the marginalization or dehumanization of targeted groups. Therefore, many legal systems and international conventions emphasize the importance of addressing and curbing hate speech to preserve the values of diversity, tolerance, and coexistence within society.³

As defined by the United Nations, hate speech refers to any form of offensive expression or behavior—whether verbal or written—that uses insulting or discriminatory language directed at an individual or a group of

individuals based on their identity. This identity may include various characteristics such as religious affiliation, ethnic origin, nationality, race, skin color, descent, gender, or other distinctive personal attributes. This type of expression is not only harmful in nature but also constitutes a violation of fundamental rights and human dignity, as it targets individuals based on inherent aspects of their being.

These forms of expression are often both a reflection and a catalyst of deep-rooted prejudice and intolerance within society. Hate speech contributes to the normalization of discriminatory attitudes, exacerbates social divisions, and, in certain contexts, may incite hostility or even violence. In legal discourse, it is recognized as a serious threat to public order and social cohesion, which is why many international conventions and national legislations emphasize the importance of its prevention and suppression to uphold human rights, equality, and peaceful coexistence.⁴

These definitions have been proposed at the level of international and regional organizations. However, the Algerian legislator has also defined discrimination and hate speech through Law 05/20, specifically in Article 02, which states:

It refers to any distinction, exclusion, restriction, or preference based on sex, race, color, lineage, national or ethnic origin, language, geographical affiliation, disability, or health status, which aims at or results in the nullification or impairment of 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.

As for hate speech, the Algerian legislator has defined it as all forms of expression that disseminate, incite, or justify—whether directly or indirectly—contempt, insult, hostility, hatred, or violence directed against an individual or a group of individuals on the basis of sex, race, color, descent, national or ethnic origin, language, geographical affiliation, disability, or health status.⁵

By examining the definitions of discrimination and hate speech as set forth in Law 05/20, it becomes evident that the Algerian legislator, unlike various international instruments which include religion as a basis for

discrimination and a ground for inciting hate speech, has not incorporated religion among the grounds for discrimination or hate speech as enumerated in Article 02 of the said law.

This omission can be attributed to the fact that Algeria is a Muslim country, whose official religion is Islam, and where adherence to other religions is virtually nonexistent. Moreover, Algeria does not recognize a sectarian system, but rather is founded upon the unity of the people and the uniformity of religion within the national territory.

2.2. The Elements of the Crime of Discrimination and Hate Speech

Discrimination and hate speech constitute a specific category of offenses that, like all criminal acts, require the fulfillment of particular elements for their legal classification and prosecution.

2.2.1. The Material Element of the Crime of Discrimination and Hate Speech

The material component of this offense manifests through a variety of actions that can appear in different forms, such as verbal statements, physical acts, gestures, or written communications. These forms of conduct share a common feature: they result in exclusion, discrimination, limitation, or preferential treatment of individuals or groups based on personal attributes like race, gender, language, or other distinguishing features, thereby violating the principle of equality and hindering the full exercise of fundamental rights and freedoms.⁶

This criminal behavior is not limited to the explicit expression of discriminatory or hateful content; it also encompasses various forms of participation, incitement, encouragement, or financial support that aim to promote or justify such acts. In this context, the means employed—whether traditional media such as print press or modern platforms such as digital media and social networks—are highly relevant, as they amplify the reach and societal impact of such speech.

Moreover, the scope of discrimination extends beyond personal or individual interactions to encompass broader societal dimensions.

It infiltrates political, economic, social, and cultural domains, often resulting in the obstruction of rights or the denial of equal opportunities for

certain segments of society. This poses a direct threat to justice and social equity.

Regarding the consequence of the act, the Algerian legislator does not require the occurrence of actual material harm for the crime to be constituted. Instead, the mere commission of the act—such as dissemination, incitement, or justification of hate speech—is sufficient for establishing criminal liability. This places the offense among “crimes of danger”, wherein the mere risk or potential harm to the protected legal interest is adequate, without the necessity of a realized criminal result or actual damage.⁷

Accordingly, the crime is legally constituted upon the commission of any act that embodies hate or discrimination motivated by certain attributes or affiliations of the victim, regardless of the method or medium used to carry it out.

2.2.2. The Moral Element of the Crime of Discrimination and Hate Speech

These offenses fall within the category of intentional crimes that necessitate the existence of mens rea on the part of the offender. This entails that the perpetrator must be fully aware of the unlawful nature of their conduct and cognizant of its implications, particularly in terms of violating human rights and undermining human dignity. Moreover, the commission of such acts must be carried out with deliberate intent and conscious will, notwithstanding the offender’s awareness of the legal and societal consequences arising therefrom

The moral element is not limited to general intent alone. It also necessitates the existence of a specific intent, reflected in the deliberate purpose of offending, insulting, or inciting hatred and violence against individuals or groups on the basis of their racial, religious, linguistic, or other inherent characteristics.⁸

This specific intent may be inferred from the nature and content of the speech in question, whether it is a direct or indirect statement, as long as it reveals a conscious will to sow division within society and to instill sentiments of hatred or exclusion among its members. Such intent

constitutes a serious threat to social peace and national cohesion.

3. Preventive Measures to Combat the Crime of Discrimination and Hate Speech

Discrimination and hate speech are among the most dangerous phenomena, as they possess the potential to incite violence, undermine social cohesion, and erode the values of tolerance within society. In order to effectively confront this issue, numerous political elites from diverse backgrounds, along with civil society actors and academics, have emphasized the need to adopt a unified and strategic approach to combat hate speech.

This effort focuses on addressing the deep-rooted causes and underlying factors that fuel such phenomena. In this context, Law No. 20-05 was enacted to establish a set of legal measures primarily aimed at combating and preventing this type of crime.⁹

3.1. Institutional Preventive Measures: "The National Observatory for the Prevention of Discrimination and Hate Speech"

The Observatory is entrusted with numerous tasks, particularly those related to monitoring the various forms and manifestations of discrimination and hate speech, and analyzing them with the aim of identifying their causes and uncovering their underlying motives.

Law No. 20-05 clearly defines the roles and powers of the Observatory, stating:¹⁰

"The Observatory is responsible for monitoring all forms and manifestations of discrimination and hate speech, analyzing them, and taking the necessary preventive measures."

In this context, the Observatory is specifically tasked with the following:

- Proposing the components of the national strategy for the prevention of discrimination and hate speech, and contributing to its implementation in coordination with the competent public authorities and all relevant stakeholders, including civil society organizations.
- Advance detection of cases of discrimination and hate speech, and promptly informing the competent authorities.

- Reporting to the competent judicial authorities the incidents that come to the knowledge of the body and are likely to constitute crimes under the law.
- Offering insights and formulating recommendations on issues connected to these offenses.
- Conducting periodic evaluations of the effectiveness and adequacy of the legal and administrative frameworks governing the prevention of these crimes.
- Establishing standards and preventive methods for combating these phenomena, and working to develop national expertise and capacities in this area.
- Preparing and implementing awareness and outreach programs, and activating and coordinating efforts aimed at raising awareness.
- Collecting, organizing, and regularly and continuously updating data and various types of information related to these crimes.
- Conducting scientific studies and research that contribute to deepening understanding and improving tools for preventing these phenomena.
- Proposing appropriate measures and amendments aimed at simplifying and enhancing the legal system.
- Enhancing cooperation and information exchange with national and international entities involved in combating discrimination and hate speech. The Observatory may request any necessary information or documents, and the concerned parties must respond within 30 days.

From this, it is clear that the Algerian legislator has granted the Observatory broad powers enabling it to play a central role in monitoring manifestations of discriminatory acts and all forms of hate speech, analyzing their causes, and proposing appropriate solutions to address them. This role aims to promote a culture of tolerance and equality within society and to reduce divisions and rhetoric that may undermine social cohesion and public peace.

3.2. The Awareness-Raising Role (of Civil Society)

Civil society is the shared space that operates outside the framework of the government and the private sector, where individuals, groups, and

organizations collaborate to achieve common goals, values, and interests. This society includes non-governmental organizations, community-based entities, professional associations, advocacy and defense groups, religious organizations, labor unions, and other voluntary associations that function independently from the state.¹¹

Civil society plays a vital role in promoting democratic governance, protecting human rights, fostering social justice, and encouraging citizen participation in public affairs. It acts as a bridge between the people and the government, amplifying the voices of marginalized groups and holding authorities accountable.¹²

In its efforts to prevent discrimination and hate speech, Algeria has assigned an important role to civil society through Law No. 20-05. Article 07 of this law stipulates that “civil society and the private sector shall be involved in the preparation and implementation of the national strategy for the prevention of discrimination and hate speech.”¹³

Accordingly, civil society is regarded as one of the most essential preventive mechanisms in combating discrimination and hate speech. It plays an effective and constructive role in addressing and responding to these phenomena. For civil society to successfully fulfill this role, it must remain free from conflicting political and social affiliations, while upholding national unity as the fundamental reference for its mission.

In this way, civil society can act as a contributing and active partner in the success of the preventive strategy, while also playing a significant role in awareness-raising activities aimed at countering discrimination and hate speech.

Therefore, the success of civil society in fulfilling its preventive role does not rely solely on its willingness to participate or the availability of its internal resources, but is closely tied to the provision of a supportive environment—morally, materially, and legally. This requires the state and relevant authorities to facilitate administrative and regulatory procedures related to the establishment and functioning of associations, especially those dedicated to strengthening social cohesion, promoting citizenship, and upholding human rights—whose objectives align with national strategies to

prevent discrimination and hate speech.

Ensuring access to funding and providing capacity-building support are also pivotal in enabling civil society organizations to effectively carry out their tasks. Moreover, their inclusion in the preparation, implementation, and monitoring of relevant public strategies and policies would strengthen public trust in preventive and support mechanisms, and foster active civic engagement in building a society based on tolerance, equality, and respect for others. This is consistent with the provisions of Law No. 20-05 on the prevention and fight against discrimination and hate speech.¹⁴

Such support would enhance the success of one of the key preventive mechanisms enshrined in Law No. 20-05, namely, the effective confrontation and mitigation of these negative phenomena.

Accordingly, the importance of civil society as a preventive mechanism in addressing discrimination and hate speech is manifested in the following dimensions:

- **The Ethical Role of Civil Society:** Civil society comprises voluntary, independent organizations based on values of respect, tolerance, and participation. It contributes to promoting a culture of cooperation and acceptance of others, playing a critical role in shielding society from discriminatory and hateful discourse.
- **Its Contribution Through Law No. 20-05:** Civil society serves as an effective preventive tool in countering discrimination and hate speech through awareness campaigns and fieldwork, rooted in national unity and devoid of conflictual alignments.¹⁵
- **The Importance of Support to Ensure Its Effectiveness:** Civil society's performance requires legal and material support, including administrative facilitation, in line with Law No. 20-05, to foster a comprehensive and effective preventive environment.

Civil society organizations are considered key instruments in shaping public awareness through awareness campaigns, comprehensive education programs, and the promotion of a human rights culture. The more individuals are informed about diversity, equality, and the dangers of hate

speech, the more likely they are to reject discriminatory behavior.¹⁶

4. Deterrent measures to combat the crime of discrimination and hate speech

The legislator has established a set of principal penalties for perpetrators of this type of crime under Law No. 20-05. The law also provides for the possibility of imposing supplementary penalties in accordance with the provisions of the Penal Code.

4.1. principal penalties

Law No. 20-05 includes a set of penalties based on the different situations it addresses.¹⁷

According to Article 20 of the aforementioned law, any person who publicly incites the commission of the crimes stipulated in this article, or organizes, glorifies, or engages in propaganda for such acts, shall be punished with imprisonment ranging from one (1) to three (3) years and a fine ranging from 100,000 DZD to 300,000 DZD—unless the act constitutes an offense punishable by a more severe penalty under another provision of the law.

This means that any individual who refers to or encourages others publicly, in front of an audience, or through media and social networks to commit acts of discrimination or disseminate hate speech is considered to be committing the standalone crime of incitement.

Moreover, the law imposes harsher penalties in certain aggravated circumstances, where the crime of discrimination or hate speech is punishable by imprisonment from two (2) to five (5) years and a fine ranging from 200,000 DZD to 500,000 DZD, in the following cases:¹⁸

- If the victim is a child, or if the offender took advantage of the victim's health condition—such as illness, disability, or physical or mental incapacity—to commit the crime;
- If If the offender exploited any legal authority or position to commit this type of crime;
- If the offense was carried out by multiple individuals, whether as main perpetrators or collaborators.
- If the crime was perpetrated through the use of information and

communication technologies.

Furthermore, if the act of discrimination or hate speech involves incitement to violence, Article 32 of Law No. 20-05 provides that the perpetrator shall be punished with imprisonment from three (3) to seven (7) years and a fine ranging from 300,000 DZD to 700,000 DZD.¹⁹

This provision illustrates the Algerian legislator's strict stance in addressing forms of hate speech that go beyond verbal or symbolic expression and reach the level of explicit incitement to violence.

The prescribed penalty—imprisonment ranging from three (3) to seven (7) years and a substantial fine—reflects that the law classifies this type of speech as a crime that threatens public order and social peace.

The Algerian legislator has also criminalized the establishment of associations or organizations with the intent of preparing to commit one or more of the crimes related to discrimination and hate speech as defined by the law. Participation in such entities is likewise criminalized, and the founders or participants are subject to the same penalties as those prescribed for the principal offense. The crime is considered established upon the mere existence of a joint intent to commit the act.

In addition, the legislator has criminalized the encouragement or financing of activities, associations, organizations, or groups that promote discrimination and hate speech. For such acts, the law prescribes imprisonment from two (2) to five (5) years, and a monetary fine ranging from 500,000 DZD to 1,000,000 DZD.²⁰

The Algerian legislator has also imposed stricter penalties under Article 34, which stipulates that:

"Anyone who creates, manages, or supervises a website or electronic account dedicated to publishing information aimed at promoting any program, ideas, news, drawings, or images that may incite discrimination and hatred within society shall be punished with imprisonment ranging from five (5) to ten (10) years and a fine ranging from 5,000,000 DZD to 10,000,000 DZD."²¹

These provisions reflect the legislator's awareness of the dangers of the cyber domain, which is considered a highly sensitive space that can be

exploited to spread hate speech and promote discriminatory ideologies. Technological advancements and modern means of communication have significantly influenced criminal behavior, as they have infiltrated various aspects of life²², leading to more complex methods of committing crimes and an increase in their severity.

In light of digital advancement and the widespread use of social media platforms and websites, the dissemination of information has become increasingly fast and accessible, which makes combating these phenomena all the more challenging.

Articles 30 to 35 of Law No. 20-05 on the Prevention and Combating of Discrimination and Hate Speech establish a strict legal framework that reflects the Algerian legislator's firm commitment to seriously addressing these phenomena, which threaten social cohesion and national unity. This legal framework includes severe criminal penalties, consisting of imprisonment and financial fines, imposed on anyone who commits acts related to inciting discrimination or promoting hate speech, whether such acts are explicit or implicit, and regardless of the means used to carry them out.

The legislator did not limit the criminalization to traditional acts alone but expanded the scope of criminal liability to include acts committed via cyberspace, various media outlets, printed materials, websites, and even products containing inciting content. This expansion demonstrates a clear awareness of the evolution of modern means of expression and a determination to close any legal loopholes that may be exploited to spread division or incite hatred within society

4.2. Supplementary penalties

The Algerian legislator has granted the competent judicial authority the power to impose one or more supplementary penalties, as provided for in the Penal Code, on individuals convicted of the offenses stipulated in the Law on the Prevention and Fight against Discrimination and Hate Speech, in addition to the primary penalties prescribed for such acts.²³

This legislative approach reflects a tendency toward stricter punishment and aims to reinforce its deterrent effect. However, the legislator did not clearly

define the specific cases or criteria that necessitate the application of supplementary penalties. Instead, a general expression was used, stating that "the judicial authority may impose a supplementary penalty," thus leaving the matter to the discretionary power of the judge based on the circumstances of each individual case.

The supplementary penalties provided for in the Algerian Penal Code include the following:

- Legal incapacitation;
- Denial of the enjoyment of national, civil, and familial rights;
- Restriction or prohibition of residence;
- Partial confiscation of assets;
- Suspension from engaging in a particular profession or activity for a limited period
- Closure of the establishment;
- Exclusion from public procurement contracts;
- Restriction on issuing checks and/or utilizing payment
- Suspension, revocation, or cancellation of a driver's license, accompanied by a prohibition on applying for a new one.
- Withdrawal of the passport;
- Publication and posting of the conviction ruling or decision.²⁴

The legislator has stipulated the confiscation of technical means, such as devices, software, and messages used in the commission of a crime, in addition to the funds derived from such crimes. The ruling may also include the closure of the website or account used in committing the crime or blocking access to it.²⁵

5. CONCLUSION

The rise of discrimination and hate speech in Algerian society in recent years has raised growing concerns about the negative impact of these phenomena on the cohesion of the social fabric and the threat they pose to national identity. Manifestations of exclusion, incitement, and division have taken various forms, whether through public discourse or digital platforms, prompting the need for urgent and decisive legislative intervention. In this context, Law No. 20-05 on the prevention and fight against discrimination

and hate speech was introduced as a clear legal response to these escalating challenges.

This law includes a set of measures divided into two main aspects: the first is preventive in nature, aiming to eliminate the sources of these crimes by promoting a culture of tolerance and coexistence, and by strengthening the role of civil society organizations, the media, and educational institutions in awareness and education. The second aspect is punitive in nature, involving the imposition of strict criminal penalties, including imprisonment and financial fines, in addition to supplementary sanctions targeting individuals and institutions involved in disseminating such discourse. This legislative approach reflects the Algerian legislator's commitment to protecting society from fragmentation and conflict and to ensuring the continued peaceful coexistence among its diverse cultural and social components.

6. Endnotes

¹- International Covenant on Civil and Political Rights (ICCPR), General Comment No. 18, para. 7

² - According to the United Nations Rabat Plan of Action (2012).

³ Furthermore, the Council of Europe's Committee of Ministers Recommendation No. R (97) 20

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¹⁸ - Article 31 . op. cit

¹⁹ - Article 32 . op. cit

²⁰ - Article 33 . op. cit

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²² -Abdelnour Bajji and Nacima Malek, (2022) , Cyberterrorism: Between the Globalization of Crime and the Necessity of Combating It, *Journal of Legal Studies and Research*, Vol. 7, No. 2, p. 67.

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²⁵ - Ben Kouia Mokhtar, (2022) , “Prevention of Discrimination and Hate Speech: Another Restriction on Freedom of Opinion and Expression in Algeria,” *Notebooks of Politics and Law*, No. 2, January, p. 220.