

Hate Speech in Light of Law No. 20-05 A Legal Reading

خطاب الكراهية في ضوء القانون رقم 05-20 قراءة قانونية

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Abstract:

This study aims to highlight the seriousness of the spread of hate speech, especially since it has become more prevalent due to the proliferation of media and digital platforms. This has prompted governments and lawmakers to confront it by enacting laws that criminalize this content, which incites hatred, resentment, and racial discrimination.

Given the political and social consequences of this extremist speech, the Algerian legislator issued a special legal text, Law 20-05 on the prevention of discrimination and hate speech and the fight against them.

The study included an analysis of this law to consider its effectiveness as a legal measure to deter hate speech publishers in Algeria. The results showed that this legal measure was sufficient to combat the phenomenon due to the severity of sentences it imposed, the redoubling of the sentence, and the increase in additional penalties.

Keywords: Crime, Hate, Speech, Hate Speech, Law 20-05.

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Introduction

Recent years have witnessed a significant and clear spread of what is known as "hate speech" around the world. Due to crises, wars, and the circumstances experienced by many countries, many voices have begun to call for discrimination, intolerance, hatred, and division on the basis of nationality, ethnicity, language, and especially religion. Political parties have attempted to exploit these hostile, provocative, and aggressive voices to serve their purposes.

This verbal violence and the incitement to racial discrimination in its various forms, hatred, abuse of others, intolerance, exclusion, and other negative aspects broadcast by traditional and new media are what has become known as hate speech. Its danger increases as it spreads more, which has made many groups and small communities in many countries live in a state of fear and distrust due to the hostile speeches that threatened their existence because of religion or ethnicity.

Hate speech has become a major threat to the unity of the people of the same country, national cohesion, and general human principles. It has become a reason for disintegrating social unity and creating conflicts because it is used to incite violence against others, ostracize and belittle them, and increase levels of violence against groups of different ethnic and religious affiliations in society. It has turned into a speech that feeds sectarian strife.

The phenomenon of the spread of hate speech is old in its origin, but it has become more prominent and widespread today due to the media, which has contributed to expanding its scope and turning it into a media material to serve specific parties. Then this racist speech became more widespread due to the new media, especially the various social networking sites, which have become a fertile environment for the spread of verbal violence and the discourse of discrimination and division on the widest scale. This discourse turns into easily shared posts that reach millions of users around the world.

This study focuses on shedding light on the dark side of hate speech. These intolerant phrases and paragraphs are capable of spreading intolerance, provoking violence, and inciting chaos on the widest scale, thanks to the widespread spread of this speech on the internet and various social networking sites. This speech has become one of the main reasons leading to division and fragmentation in the world, and it is therefore a threat to human peace.

This reality has prompted the governments of various countries to reconsider their mechanisms, laws, and regulations and adapt them to the requirements of confronting this phenomenon that threatens the stability and security of society. This is what prompted the Algerian government to create several mechanisms to confront the danger of the spread of hate speech and discrimination among the people of the Algerian nation, by issuing laws that criminalize the dissemination of hate speech and impose the maximum penalties on the perpetrators of this crime.

Therefore, this study came to shed light on one of these mechanisms outlined to reduce the spread of the crime of disseminating hate speech in Algeria, which is Law No. 20-05 on the prevention and combating of discrimination and hate speech. This is done by analyzing its text and scrutinizing its articles to reveal the extent to which it is sufficient alone as a legal measure to deter disseminators of hate speech in Algerian society through various media, or whether it is a single insufficient measure to confront this crime and that it needs other auxiliary mechanisms.

This is done by providing a sufficient answer to the main research question in its following complex form:

How does Law 20-05 on the prevention and combating of discrimination and hate speech criminalize the dissemination of hate speech? And to what extent is it sufficient as a legal measure in combating the crime of disseminating hate speech in Algeria?

- **Sub-Questions of the Study:**

To reach a sufficient answer to the main research question, it was broken down into the following sub-questions:

1. How did the Algerian legislator define the crime of disseminating hate speech?

2. How does Law No. 20-05 criminalize the dissemination of hate speech through various media?

3. Is Law No. 20-05, as a legal measure, sufficient to confront the perpetrators of the crime of disseminating hate speech in Algeria?

4. What are the supporting mechanisms and procedures that can reduce the spread of hate speech in Algerian society?

- **Study Objectives:**

The study aims to achieve the following objectives:

1. To define hate speech and highlight its characteristics.

2. To extract the legal definition of the crime of disseminating hate speech in Algerian law.

3. To clarify the mechanism of criminalizing the dissemination of hate speech in Law No. 20-05 and the resulting penalties.

4. To assess the sufficiency of Law No. 20-05 as a legal measure to combat the crime of disseminating hate speech through various media in Algeria.

5. To identify the most important supporting mechanisms and procedures that can contribute to combating the crime of disseminating hate speech.

Firstly: Defining Concepts

This study deals with the following key concepts :

1. Definition of Discourse:

Michel Foucault defines discourse as a "complex network of social, political and cultural systems that highlight the way in which speech is produced as discourse"¹

2. Definition of Hatred:

Hatred is defined as disgust or loathing. It is a withdrawal emotion that is accompanied by intense aversion and hostility or lack of empathy towards a person, thing, issue or situation. The hater tends to desire to avoid, isolate, transfer or destroy the hated thing. Hatred can be built on fear of a specific object, a negative past or a specific person that resulted from dealing with that individual or for a person.

3. Definition of Hate Speech:

Hate speech is defined as "all forms of expression, oral or written, that aim to spread, incite, promote or justify hatred on the basis of prejudice"².

4. Operational Definition of the Crime of Spreading Hate Speech:

The crime of spreading hate speech is the dissemination and promotion of extremist, hostile, biased speeches that incite hatred of others. It is a premeditated act that occurs when the perpetrator targets a victim because of their affiliation with a particular social group or ethnicity. It can include discrimination on the basis of gender, race, disability, language, nationality, physical appearance or religion.

Secondly : Results of the Analytical Study

To answer the research questions in light of the analytical reading conducted on the text of Law No. 20-05 on the prevention and combating of discrimination and hate speech, the study is divided into the following main elements:

1. Definition of the Crime of Disseminating Hate Speech in Algerian Law:

In the Algerian law No. 20-05 related to the prevention and fight against discrimination and hate speech, the Algerian legislator defined the crime of publishing hate speech in Article 02 as: All forms of expression that publish, encourage, or justify discrimination, as well as those that include a style of contempt, insult, hostility, hatred, or violence directed at a person or group of people based on sex, race, color, descent, national or ethnic origin, language, geographic affiliation, disability, or health status.

This definition is an expressive formulation that combines several aspects expressing the most common forms of expression that incite feelings of hatred and the resulting violence, chaos, and racism. The Algerian legislator in this article has attempted to include all the forms in which hate speech appears through different media or in public discussion. The legislator also emphasized the tone of the legal text by making any act of publishing content that encourages or justifies hatred punishable by law. This makes the text of the article a strict warning and punitive text that can be applied to all attempts to publish content that aims, even formally or implicitly, to incite discrimination and hatred.

The article also attempts to include as many methods as possible through which hate speech manifests itself, despite the difficulty of comprehensively listing them due to the lack of a specific definition for hate speech, given the multiplicity of its forms and effects.

Among the methods mentioned in the article are:

- **Contempt:**

Contempt is a negative behavior in which a person expresses disdain and contempt for something, a person, or a specific group. It also expresses a person's view of others, feeling that they are inferior and worthless. These feelings express hatred and resentment.

- **Insult:**

Any deliberate offensive, rude, or impolite expression, action, or behavior intended to offend, harm, or despise. It is an offensive or despicable expression, or speech (and sometimes behavior). The insult may be intentional or unintentional.

- **Hostility and Incitement of Hatred:**

It is a harmful behavior performed by an individual as an expression of aggressive feelings but in indirect ways. Signs of this behavior include procrastination, telling hostile jokes, stubbornness, resentment, frowning, apathy, or deliberate and repeated failure to complete tasks assigned to the individual.

- **Violence Directed at an Individual or Group Based on Discrimination:**

It is an expression that incites violence against others for one of the following reasons:

- Gender discrimination.
- Discrimination based on color.
- Discrimination based on lineage.
- Discrimination based on national or ethnic origin.
- Discrimination based on language.
- Discrimination based on geographical location.
- Discrimination based on disability.
- Discrimination based on health status.

2. Criminalization of Disseminating Hate Speech through Various Media under Law No. 20-05:

In the Algerian law 20-05 related to the prevention and fight against discrimination and hate speech, the legislator dedicated the fifth chapter to criminal provisions. This chapter specifies the crime of publishing hate speech and details the penalties assigned to the act, which range from simple punishment to doubling the punishment. The penalties vary between imprisonment and financial fines.

A. Punishment for Publishing Hate Speech:

Article 30 of Law 20-05 on the prevention and fight against discrimination and hate speech states: "Whoever commits an act of discrimination or hate speech shall be sentenced to imprisonment from six (06) months to three (03) years and a fine of 60,000 DA to 300,000 DA³".

The law requires that the act of discrimination or hate speech be committed publicly, whether through incitement to commit an act of discrimination or hate speech, organizing, praising, or carrying out propaganda activities that serve the purpose of spreading hate speech. The legislator did not specify in this article the means of publishing this hostile speech, which makes the punishment applicable as

soon as the act is committed publicly through any means, whether it be traditional or digital media and communication or in a public and announced discussion.

B. Doubling the Penalty Based on Increased Impact:

Law 20-05 in Article 31 doubles the penalty to imprisonment from two (02) to five (05) years and a fine of 200,000 DA to 500,000 DA in the following cases:

- If the victim is a child or the ease of committing the crime is due to the victim's illness, disability, or physical or mental impairment.
- If the perpetrator has legal or actual authority over the victim or exploits his or her position to commit the crime.
- If the act is committed by a group of persons, whether as principal perpetrators or accomplices.
- If the crime is committed using information and communication technologies.

From the aforementioned cases, it is clear that the legislator resorted to doubling the penalty for several reasons:

- The severity of the harm resulting from the crime of publishing hate speech when the victim is a child, a sick person, a disabled person, or a person with disabilities, due to the severity and seriousness of the psychological impact on them.
- The exploitation of authority, influence, and position in committing the crime, which negatively affects the reputation of the position and the exploited authority.
- The power of spread and influence, in the case of using new information and communication technologies in the crime.

c. Criminalization of Incitement to Violence:

The Algerian legislator has strengthened the penalty in the text of Article 32 because the crime mentioned therein is embodied in the incitement to violence. The text states that: "Anyone who uses hate speech to incite violence shall be sentenced to imprisonment from three (03) to seven (07) years and a fine of 300,000 DA to 700,000 DA."

d. Criminalization of Supporting and Participating in the Activities of Entities Promoting Hate Speech:

This is mentioned in Article 33, where the legislator imposed a prison sentence of two (02) to five (05) years on anyone who praises, encourages, or finances by any means the activities or associations, organizations, or groups that call for discrimination and hatred.

This is also emphasized in Article 36, which states that: Anyone who establishes or participates in an association or agreement that constitutes or is formed for the purpose of preparing for one or more of the crimes provided for in this law shall be punished with the penalties prescribed for the crime itself, and this crime is committed as soon as there is a common intent to commit the act.

E. Strictening the Penalty for Publishing Hate Speech Through Websites, Electronic Accounts, and the Production of Digital Media:

Article 34 takes a strong stance and imposes a harsher punishment, stipulating imprisonment from five (05) to ten (10) years and a fine of 5,000,000 DA to 10,000,000 DA for anyone who creates, manages, or supervises a website or electronic account dedicated to publishing information that promotes any program, ideas, news, drawings, or images that are likely to incite discrimination and hatred in society.

Article 35 also states that: "Anyone who produces, manufactures, sells, offers for sale or trade, products, goods, printed matter, recordings, films, tapes, discs, computer programs, or any other medium carrying any form of expression that is likely to lead to the commission of the crimes provided for in this law shall be sentenced to imprisonment from two (02) to five (05) years and a fine of 200,000 DA to 500,000 DA."

F. Confiscation of Devices Used to Commit the Crime:

Article 37 states that: Without prejudice to the rights of bona fide third parties, the confiscation of the devices, programs, and means used to commit one or more of the crimes provided for in this law and the proceeds thereof shall be ordered, and the website or electronic account through which the crime was committed shall be closed or access to it shall be made impossible, and the shop or place of exploitation shall be closed if the crime was committed with the knowledge of its owner.

G. Establishment of Complementary Penalties and Their Doubling:

Article 38 provides for other complementary penalties, stating that: a legal person who commits one of the crimes provided for in this law shall be punished by the penalties provided for in the Penal Code.

These penalties are those provided for in Article 9 of the Penal Code, namely:

- Legal sequestration.
- Deprivation of national, civil, and family rights.
- Restriction of residence.
- Prohibition of residence.
- Partial confiscation of assets.
- Temporary prohibition from practicing a profession or activity.
- Closure of the establishment.
- Exclusion from public contracts.
- Prohibition from issuing checks or using payment cards.
- Suspension or withdrawal of the driving license or its cancellation with the prohibition from issuing a new license.
- Withdrawal of the passport.
- Publication or posting of the judgment or conviction order.

The legislator also indicated in Article 39 that: an attempt to commit the misdemeanors provided for in this law shall be punished by the penalties prescribed for the crime itself.

This means that an attempt to commit a crime is equal to completing the crime, and the penalty for a misdemeanor is equal to the penalty for a crime. Therefore, this can be considered a strict and deterrent penal provision.

The legislator confirmed this in Article 41: The competent judicial authority may sentence the perpetrators of the crimes provided for in this law to one or more of the complementary penalties provided for in the Penal Code.

And in Article 42: Which states that: In case of recidivism, the penalties provided for in this law shall be doubled.

H. Cases of Benefiting from Pardon from Punishment:

The cases are mentioned in Article 40, which states that: Anyone who commits or participates in one or more of the crimes provided for in this law and, before the prosecution proceedings are initiated, informs the administrative or judicial authorities of the crime and helps to identify the perpetrators and/or arrest them shall benefit from the excuses exempting from punishment provided for in the Penal Code.

The penalty shall be reduced by half for any person who commits or participates in one of the crimes provided for in this law and who, after the prosecution proceedings have been initiated, helps to arrest one or more of the persons involved in its commission and/or discloses the identity of those who contributed to its commission.

3. Law No. 20-05 as a Legal Measure to Confront Perpetrators of the Crime of Disseminating Hate Speech in Algeria:

Law No. 20-05 on the Prevention and Combatting of Discrimination and Hate Speech is one of the most important legal measures taken to confront the crime of spreading hate speech. This crime carries with it calls for violence, discrimination, hostility, and division, and has spread noticeably through various media outlets under sensitive circumstances where the use of rational discourse was expected.

The enactment of this law in 2020 came as a decisive measure and a solution to the widespread phenomenon of the spread and promotion of various forms of hate speech. This speech can undermine the security and unity of the nation, especially through social media platforms which have become platforms for publishing articles that offend the foundations of national unity, social harmony, and national cohesion.

They also incite sedition and hatred among the citizens of the same country. Accounts operating from inside and outside the country have become active in broadcasting hate speech, contempt, and derogatory terms towards individuals or groups in society based on regional, ethnic, religious, and personal considerations.

This law is considered a gain for the legal arsenal in Algeria, in addition to the Penal Code and its amendment, which was introduced in 2020. Law 20-05 includes a set of penalties and preventive measures to protect society and establish a National Observatory for the Prevention and Combatting of Discrimination and Hate Speech. This law has created a new mechanism and deterrent and preventive measures to combat hate speech and protect society from this phenomenon.

However, any legal action still requires supportive community, cultural, and ethical mechanisms, in addition to awareness programs organized by government

agencies, civil society organizations, and all efforts that aim to increase individuals' awareness of the importance of verifying the nature and purposes of the information and speeches they are exposed to through social media. They should also avoid being drawn into calls for violence promoted by extremist discourses that aim at division.

4. Supporting Mechanisms and Procedures to Reduce the Spread of Hate Speech in Algeria:

On a global level, the significant increase in hate speech, discrimination, and violence in the world in recent years has raised concerns for countries, governments, international agencies and organizations, including the United Nations, which has developed a strategic plan to combat hate speech. This plan consists of 13 commitments that countries are expected to adhere to and implement at both local and global levels. Among these commitments, there are three fundamental ones that can be acted upon and transformed into a foundation for all stakeholders involved in combating hate speech, including individuals, governmental and non-governmental institutions, and various media outlets. These commitments are:

- Promoting understanding and monitoring of hate speech and its impact on societies.
- Identifying and designing programs aimed at addressing the underlying motivations and root causes of hate speech.
- Supporting alternative and positive narratives to counter hate speech.

On a national level in Algeria, several mechanisms have been adopted and activated to combat the crime of spreading hate speech, in addition to Law No. 20-05. These mechanisms include:

A. National Observatory for the Prevention of Discrimination and Hate Speech:

For the first time, Algeria has established a National Observatory dedicated to combating the crime of discrimination and the spread of hate speech. Article 5 of Law 20-05 of Chapter II states the state's commitment to developing a national strategy for the prevention of discrimination and hate speech, with the aim of promoting ethical public life, spreading a culture of tolerance and dialogue, and rejecting violence from society.

This commitment is manifested in the establishment of the National Observatory under Article 9 of Law 20-05, which stipulates that the Observatory is established and placed under the authority of the President of the Republic.

Article 10 further clarifies the tasks and roles of the Observatory, which include:

- Proposing elements of the national strategy for the prevention of discrimination and hate speech, and contributing to its implementation in coordination with the relevant public authorities, various stakeholders in this field, and civil society.
- Early detection of acts of discrimination and hate speech and notifying the relevant authorities.

- Notifying the competent judicial authorities of any acts that come to its knowledge and that may constitute a crime punishable under this law.
- Providing opinions or recommendations on any issue related to discrimination and hate speech.
- Periodically evaluating legal instruments and administrative procedures in the field of preventing discrimination and hate speech, and developing national expertise in this area.
- Identifying standards and methods for preventing discrimination and hate speech, and developing national expertise in this field.
- Developing awareness programs and activating and coordinating awareness-raising campaigns on the dangers of discrimination and hate speech and their impact on society.
- Collecting and centralizing data related to discrimination and hate speech.
- Conducting studies and research in the field of preventing discrimination and hate speech.
- Submitting any proposal that may simplify and improve the national legal framework for preventing discrimination and hate speech.
- Developing cooperation and exchanging information with various national and international institutions working in this field.

B. Judicial Assistance: International Cooperation to Combat Discrimination and Hate Speech Crimes:

Article 43 of Law No. 20-05 provides for judicial assistance as a legal mechanism based on international judicial cooperation to combat discrimination and hate speech crimes and prosecute their perpetrators. This can be done within the framework of ongoing investigations or inquiries to examine the crimes specified in Law No. 20-05. The competent authorities may resort to international judicial cooperation, in accordance with international agreements and the principle of reciprocity.

Article 44 of the same law stipulates that requests for international judicial cooperation aimed at exchanging information or taking any precautionary measures shall be responded to in accordance with relevant international agreements, bilateral international agreements, and the principle of reciprocity.

C. Activating the Role of the National Human Rights Council:

The National Human Rights Council (NHRC) has acknowledged the need to intensify efforts to combat hate speech, racism, fake news, and misinformation campaigns on social media platforms. This is essential to preserve genuine freedom of expression and, consequently, true democracy.

To achieve this, the NHRC focuses on:

- Raising awareness of democratic principles in educational programs at all levels, as well as in literacy and media programs.

- Enabling everyone to understand the true meaning of democracy, get used to respecting and accepting differences and other opinions, and promoting dialogue. This is in line with the 2020 constitutional amendment, which gave civil society a significant role in building the democracy that the people want.

- Establishing a dedicated observatory to gather the strength of civil society and make it a force for proposing, contributing, holding accountable, and evaluating public policies.

The NHRC also emphasized the necessity and importance of civil society participation in all political aspects, through various forms and mechanisms. This participation is the guarantee of this right. The NHRC considers civil society to be a privileged partner in promoting and protecting human rights.

Conclusion

The transformation of hate speech into a direct threat to social stability and the insistence of its promoters on exploiting ethnic, religious and political differences, and investing in the capabilities of various media to spread and disseminate such biased and extremist speeches, is what made many countries, such as Algeria, translate the act of spreading hate speech, in order to preserve the security and unity of the nation and the stability of its individuals, by enacting a special law to confront this speech, which is law No. 20-05 related to the prevention and combating of discrimination and hate speech, which was analyzed in this study and reached the following results:

- The Algerian legislator, for the first time, dedicated a special law to combat discrimination and hate speech, embodied in law 20-05 related to the prevention and combating of discrimination and hate speech.

- Law 20-05 related to the prevention and combating of discrimination and hate speech defined the crime of discrimination and hate speech and criminalized it.

- The legislator emphasized the strictness of the wording of the articles of law 20-05 and the severity of the penalties imposed on the perpetrators of the crime of discrimination and hate speech by doubling the penalty and establishing additional penalties.

- The legislator, through law 20-05 related to the prevention and combating of discrimination and hate speech, established several mechanisms to confront the crime of spreading hate speech, namely the National Observatory for the Prevention of Discrimination and Hate Speech, and the judicial delegation that explains how international cooperation can be used to combat the crime of discrimination and hate speech.

- Law 20-05 related to the prevention and combating of discrimination and hate speech is a sufficient legal measure to confront the spreaders of hate speech, but it needs to support awareness mechanisms and activate the role of civil society to consolidate a culture of tolerance and reject discrimination.

The study also reached a set of recommendations, which are as follows:

- Spreading the culture of tolerance and unity by including it as a subject in the educational curricula of different stages.
- Activating the role of universities and research centers in combating the phenomenon of discrimination and hate speech by organizing forums, conferences and seminars that explore the phenomenon, raise awareness about it, point out its dangers and propose solutions to address it.
- Activating the role of civil society organizations in combating the crime of discrimination and hate speech, by activating the role of cultural associations that play a fundamental role in raising awareness among citizens about the dangers of hate speech, and promoting the initiatives of various associations that seek to spread the values of tolerance, cooperation and unity.
- Engaging in international initiatives aimed at combating hate speech.

Margins :

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³. Law No. 20-05 dated 05 Ramadan 1441 corresponding to April 28, 2020, relating to the prevention of discrimination and hate speech and the fight against them, Official Gazette of the Algerian Republic, No. 25, 2020.