

RESEARCH ARTICLE	Justified discrimination under Law No. 20-05 on the prevention of discrimination and hate speech - an analytical study	
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Abstract		
Paradoxically, Law No. 20-05, Algeria's legislative attempt to combat hate speech and discrimination, includes clauses that allow for differential treatment under certain circumstances, resulting in a complicated legal environment where equality and legitimate discrimination coexist. A wider understanding of international law that not all distinctions amount to illegal discrimination is reflected in these exceptions, which are based on the pursuit of justifiable goals and proportionate means. The legalization of justified discrimination acknowledges that in some situations, treating everyone the same way may reinforce or worsen already-existing disparities. This sophisticated approach aims to strike a compromise between the practical necessity to address particular societal issues and advance substantive equality and the broader principle of non-discrimination. Although equality of opportunity is a key component of anti-discrimination initiatives, it recognizes that attaining true equality may call for short-term or focused policies that discriminate against particular groups. A detailed analysis of the legal and social structures that allow for differentiated treatment is necessary to comprehend the subtleties of justified discrimination.		
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Introduction:

The right to equality is considered one of the fundamental rights inherent to human beings, and the Algerian constitutions have explicitly stated this right, the most recent being the constitutional amendment of 2020 in Article 37.1 aligning it with what international charters have established.

The importance of the right to equality stems from being the foundation for individuals to enjoy all other rights and freedoms equally with others without any discrimination, and its affirmation means the absence of discrimination based on gender, race, religion, opinion, or any social or personal circumstance.

In its commitment to support and embody the principle of equality, the Algerian legislator amended the Algerian Penal Code.² in 2014 through Law 14-01, which modified and supplemented the Penal Code, introducing a set of new crimes, including the crime of discrimination, which had not previously been included in the Penal Code. The

criminal legislator dedicated Articles 295 bis 1, 295 bis 2, and 295 bis 3 to this crime. Subsequently, in 2020, the legislator issued a special law independent of the Penal Code, namely Law No. 20-05 on the prevention and combating of discrimination and hate speech.³ Under this law, the aforementioned articles dedicated to the crime of discrimination in the Penal Code were repealed and replaced by Articles 30, 38, and Article 3. Thus, Article 295 bis 1 was repealed and replaced by Article 30 of Law 20-05, Article 295 bis 2 was repealed and replaced by Article 38 of Law 20-05, and Article 295 bis 3 was repealed and replaced by Article 3 of Law 20-05.

Indeed, it is evident from a review of the repealed articles in the Penal Code or Law 20-05 that the legislator has made hate speech and discrimination crimes, regardless of their form, illegal and deemed them all crimes that, in accordance with the applicable laws, must be punished by their perpetrators. Nonetheless, there are instances in which the law allows discriminatory activities that are not

crimes and do not carry penalties; this is an exception to the general norm. These discriminatory practices are permitted under the repealed articles of the Penal Code, which will be replaced by the provisions of Law 20-05, the topic of our investigation.

Given the dearth of discussion on the subject in recent studies pertaining to this law, it is imperative to examine the justifications for permissibility in order to identify acts that are not deemed discriminatory crimes when they are committed and how the legislator has addressed this issue in Law 20-05. In order to comprehend the changes and determine if they have addressed the shortcomings in the Penal Code, our analysis will begin with the abolished articles in the Penal Code and compare them with the provisions of Law 20-05.

By examining the relevant legal sources, we will try to address the following problem: In order to address the shortcomings noted in the repealed articles of the Penal Code, has the Algerian legislator been able to provide an adequate legal framework to govern the grounds for permissibility in discriminatory crimes in accordance with what is stated in Article 3 of Law 20-05?

The primary question will be addressed in two parts, with the first portion devoted to concept definitions and the second to determining the permissible instances specified in both laws. When required, we will apply a comparison strategy in addition to our descriptive and analytical approach.

1. Concepts about the crime of discrimination and the reasons for its permissibility

Discrimination is a term in international law referring to any distinction made on the basis of racial discrimination, religion, social status, or other bases of discrimination mentioned in international or domestic legal texts. It is also the belief in the existence of differences among people that justify treating them differently, and discrimination in this sense is a criminal act. As for reasons for justification, these are actions that are originally criminalized but are permitted by the legislator, and their perpetrator is not punished if certain conditions stipulated by law are met. Reasons for justification are considered exceptions to the rule.

1/1/ The concept of the crime of discrimination

Due to the numerous definitions related to discrimination, there is not enough space to mention and discuss them all; therefore, we will limit ourselves to the linguistic definition and the legal definition briefly, as required to serve this research.

Modern dictionaries define the verb "to distinguish" as separating something from others, favoring one over another. "Distinction" refers to elevation, and "racial distinction" refers to the preference of whites over blacks, which was led by the rulers of South Africa, who replaced the indigenous population in the land's origin. "To distinguish" means to isolate and separate something from others, fa-

voring some over others; it is said to remove harm from the road, meaning to push it away and eliminate it⁴

When referring to foreign languages such as French and English, we find that "discrimination" has multiple synonyms, including in French: Discrimination, Apartheid, and Racisme. The Larousse dictionary states that discrimination is the different treatment of an individual or a group of individuals, characterized as segregation, whether it is racial or social.⁵

In English, discrimination means making a distinction between two people or things, and it is defined as treating an individual or a group of individuals worse than others. Any discrimination against any ethnic or religious group is considered illegal, and discrimination is the treatment of an individual or a group of individuals worse than others based on gender, race.....⁶

The criminalization of discrimination is primarily due to international law, which takes precedence over all domestic laws in addressing this issue. This is due to the global wars that have erupted over discrimination between different peoples, whether based on religious, ideological, ethnic, or racial differences.

The International Convention on the Elimination of All Forms of Racial Discrimination was the first of many international agreements to make discrimination in all of its manifestations illegal, which addressed this crime in its first article as follows: "Any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing 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 is considered racial discrimination under this Convention.

It is suggested that discrimination be defined as any action intended to favor, exclude, or restrict any individual or group on the basis of race, color, descent, or national or ethnic origin and to impede the enjoyment of human rights under Article 1 of this Convention. It is significant that the word "racist," which denotes the negative aspect of the conduct, is used in conjunction with discrimination in the Convention. Every instance of racial discrimination is abhorrent and needs to be addressed.⁷

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So, the combination of the two words, discrimination and racism, indicates a preference, exception, or restriction in treating one race differently from the rest of the people.

Also, by referring to Article 4 of the Convention⁹ It is noted that the act of discrimination has expanded to include several actions, whether they are propaganda and organizations based on ideas or theories that claim the superiority of any race or any group of one color or ethnic origin, and every incitement to discrimination and every act of it, such as participating in it.¹⁰

Article 295 bis 1 of the Algerian Penal Code, as amended by Law 14-01, contained the first provision pertaining to the crime of discrimination. This provision was later repealed by Law No. 20-05, dated April 28, 2020, which dealt with the prevention of discrimination and hate speech and their combat.

The first paragraph of Article 295 bis 1 defined discrimination, while the second and third paragraphs were devoted by the legislator to the punishments for this offense.

Therefore, "Any distinction, exclusion, restriction, or preference based on sex, race, color, lineage, national or ethnic origin, or disability that aims to or results in hindering or obstructing the recognition of human rights and fundamental freedoms or enjoying or exercising them equally in the political, economic, social, and cultural fields or in any other area of public life constitutes discrimination," is the definition of discrimination.

It may be observed by contrasting the definitions in Article 295 bis 1 and the Convention on the Elimination of All Forms of Racial Discrimination that the Algerian lawmaker just used the word "discrimination" without tying it to the term "racial." The concept of racism, according to some scholars, is not applicable to all instances of discrimination, including prejudice against women and people with disabilities, and the term discrimination is more inclusive.¹¹

The Algerian lawmaker also departed from the context of the Convention on the Elimination of All Forms of Racial Discrimination, specifically the 1960 call for independence for colonial nations and peoples, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination issued on November 20, 1963, General Assembly Resolution No. 1904 (XVIII), and the emphasis that any doctrine of superiority based on racial segregation is wrong by using the term "discrimination" alone to refer to all forms of discrimination, whether they are directed at individuals or groups. The setting might have had more to do with supremacy amongst peoples than between citizens of the same nation.

As for referring to Article 2 of the Prevention Law of Law 20_05, discrimination is defined as follows:¹² "Any distinction, exclusion, restriction or preference based on sex, race, colour, descent, national or ethnic origin, language, geographical area, disability or health condition which has the purpose or effect of nullifying or impairing 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."

With the exception of the inclusion of the case of discrimination based on "health status," which was not addressed in either Article 295 bis 1 or the aforementioned agreement, we may conclude that the first paragraph of Article 295 bis 1 and the second article above are exactly the same. Given that this is a crime, it is evident that the legislature intended to broaden the definition of discrimination and protect a group of people who might be exposed to treatment that denies them their rights because of their health. Article 295 bis 3 of the Penal Code and Article 3 of Law 20_05 both state that: "The provisions of this law shall not apply if discrimination is based on health status..." This is also because of the desire to bring harmony between the articles that define discrimination and those that specify the justifications for permissibility. However, health condition was not specified in Article 295 bis 1; this was addressed by the legislator in Article 2 of Law 20_05.

1.2. The concept of causes for permissibility and its forms

The legislation was content to simply name its forms in the Penal Code without offering a description for the justifications for permissibility. Thus, the linguistic and jurisprudential definition will be adequate, and we shall describe its forms only to the extent that the study requires them to make the notions clear.

Permissibility is defined as disclosure, meaning necessity, as it is said that he revealed his secret, meaning he showed it. Disclosure is transitive in meaning, and the permissible comes from permission, which is a passive participle. In Lisan al-Arab, it says that disclosure means the appearance of something, and also the forbidden.¹³

The reasons for permissibility are defined as: "material circumstances that arise at the time of committing a criminal act, removing its criminal nature and transforming it into an act that justifies its commission."¹⁴

The Algerian legislator has addressed the forms of reasons for permissibility in Article 39 of the Penal Code.¹⁵ The article states the following: "1_ There is no crime if the act is authorized or ordered by law.

2_ If the act was prompted by the necessity of the situation for legitimate defense..

The phrase "legal order" refers to "performance of duty," which means that these are acts that are specifically mandated by law and carried out in compliance with a directive from the legislative branch. Stated differently, the legal wording is what gives these acts permission and strips them of their illegal character. It is observed in the article that the legislator left the scope wide to encompass all currently enacted legal texts by failing to specify the specific categories of these activities.¹⁶

Regarding the legal acts, they refer to the "exercise of the right," which is a license or authorization granted to the right holder to carry out the law. Permission instances are not defined by law; instead, they are governed by the relevant legislation whenever it states that.¹⁷

If the requirements for legal self-defense are satisfied, a person may also use legal self-defense, either against himself or against others, to defend himself or his property against an illegal danger. One justification for permissibility is legitimate self-defense, which turns an illegal conduct into a legal one.

According to the aforementioned instances of permissibility outlined in Article 39, it is not case-specific. Instead, it is realized whenever the law requires it, and in this context, the law is to be interpreted broadly. Consequently, Article 39's wording functions as a broad guideline.

The legislator introduced additional instances that are deemed grounds for permissibility in addition to Article 39. These are those outlined in Article 295 bis 3 and Article 3 of Law 2005, as well as in the Penal Code itself. In the second part of this study, we will look at these examples.

2. Permissible cases according to Article 295 bis 3 of the Penal Code and Article 3 of Law 20_05:

Since both deal with the same topic—exceptions—that is, grounds for permission that are part of the crime of discrimination, it is actually impossible to examine the justifications for permission based solely on Article 3 of Law 20_05 and in isolation from what is written in the Penal Code. Therefore, in order to extract what the legislator has incorporated in the latter, we will first discuss what is written in item 3 of Law 20_05 and then what is mentioned in the repealed item of the Penal Code.

2.1. Reasons for permissibility in the Algerian Penal Code

Article 295 bis 3 of the repealed Algerian Penal Code stipulated a set of exceptions to the crime of discrimination, and were considered as justifications, such that the act did not constitute a crime and the law did not punish it when it was within those cases. The article came as follows: "The provisions of Articles 295 bis 3 shall not apply to the crime of discrimination."^{295 bis 1 and 295 bis 2 of this law if the discrimination is based on:}

1 _ Based on health status through operations aimed at preventing the risks of death or risks affecting a person's physical safety, inability to work, or disability, and covering these risks.

2 _ Based on health status and/or disability, represented by refusal of employment based on medically established inability to work in accordance with labor legislation or the basic law of public service.

3 _ Based on gender, concerning employment when belonging to one gender or another according to labor legislation or the basic law of public service is a fundamental condition for practicing a job or professional activity.

It is clear from the article that the legislator mentioned three exceptions that are considered permissible. In the first and second cases, discrimination is based on health status or disability, while in the third case, discrimination is

based on gender. The second case is clear as it is related to the field of work and employment, allowing discrimination between candidates and rejecting those who are medically proven to be unable to perform the tasks required by the position. In contrast, the first case is vague and ambiguous, and moreover, the legislator used the term "through operations." What does the legislator mean by operations? This term is elastic and imprecise, open to narrow or broad interpretation according to individuals' desires; therefore, it would have been better to clarify this ambiguity or completely eliminate the paragraph.

Gender discrimination, or whether a person is male or female, is the subject of the third exemption. Similar to the second example, this exception relates to the hiring and employment sectors, where some specialized jobs—like those of midwives who deliver infants or policewomen who search women—require one gender to be held instead of the other. If the task assigned to them so demands, legislators have allowed gender to be a criterion for appointment to a position under the Civil Service Law or the Labor Law, and this discrimination is not illegal.

As can be seen from the aforementioned cases, the legislature has included an exemption for discrimination on the basis of health conditions—whether they be mental, physical, or connected to a disability—in the workplace. This exception relates especially to prejudice as a crime.

Though there are other industries that hire and recruit people based on unique laws and conditions that contain exceptions not found in labor law and public service legislation, we question why the legislator restricted the realm of work and employment to these two laws.

In reality, the legislature has added a number of exceptions that distinguish between people in terms of employment and working circumstances under Algerian legislation pertaining to public service or labor law; some of them are required by law, while others are permitted. Furthermore, the legislation contains numerous other circumstances that were not discussed, so the justifications the legislator offered for the crime of discrimination are not the only ones. The query is raised: Should the legislator have been satisfied with citing Article 39, which is adequate for the goal, or was it necessary to give particular justification reasons for the crime of discrimination in a specific text? Or maybe just writing "... no act specified by law constitutes discrimination" at the end of Article 295 bis 1 would have been preferable.¹⁹

2.2. Reasons for permission according to Article 3 of Law 2005

The reasons for permitting the crime of discrimination according to Article 3 of Law 2005 are as follows: "The provisions of this law shall not apply if discrimination is based on:

1 - Health status through operations aimed at preventing the risks of death or the risks of harming the physical safety

of the person or inability to work, or from disability and insuring against these risks.

2 - Health condition and/or disability, when it is represented by refusal of employment based on the inability to work medically proven in accordance with the provisions of labor legislation or the general basic law for the civil service,

3 - Gender, with regard to employment, when belonging to one gender or another, according to the applicable legislation, is a basic condition for practicing a job or professional activity.

4_ Nationality, when it is a condition for employment in accordance with the applicable legislation.

We note through the article reading the article the following:

The legislator included four foundations upon which the reasons for permissibility are based in Article 3, while there were only three in the repealed article.

The first and second grounds are always related to the health condition or disability, with some terms being replaced by others. For example, in the first ground, the term "insurance" is included instead of "coverage." The first is more correct, as it is considered a legal term and precise in its meaning. However, the same observation made regarding this paragraph in Article 295 bis 3 above remains valid and valid due to the ambiguity of this ground.

As for the second and third basis, they are clear, but what is noted is that the legislator restricted the second basis to the labor legislation or the civil service law, while in the third basis he used the phrase "the legislation in force" without restriction. It would have been better if the same formula "the legislation in force" had been used in the second basis and the field left open to all laws related to employment and recruitment according to the different sectors, given that they are not all subject to the basic law for the civil service or the labor law. We mention among them the basic law for judges and employment in the military sector, the law for contracted employees, and the law specific to the civil protection sector.

Nationality as an employment requirement is the fourth ground that the lawmaker added to the list of justifications for allowing discrimination. In this case, the legislator specified nationality for employment rather than for employment because Algerian nationality is required by the applicable employment law, whether Order 06_03 or other laws pertaining to employment in administratively related public sectors, due to its associations with national loyalty. In this instance, discrimination between citizens and foreigners is permitted by law and is not considered a crime. On the other hand, the economic, commercial, and industrial sectors' labor laws allow the hiring of foreigners under certain restrictions.

However, given that many laws outline rights that are exclusive to citizens, such as the right to vote, housing, educa-

tion, diplomatic protection, and the capacity to run for office, we also wonder why the lawmaker restricted nationality-based discrimination to work alone. As can be seen from the above regarding Article 3 of Law 20_05, the shortcomings of Article 295 bis 3 remain even after the legislator added a fourth case because it does not take the place of the numerous instances of acceptable discrimination that the legislator adopted and that are outlined in either domestic laws or international agreements that Algeria has ratified. These situations include discrimination that separates, restricts, or forbids, as well as those that are deemed positive discrimination in favor of individuals or groups and offer them precedence over others.

It is sufficient to cite the Convention on the Elimination of All Forms of Racial Discrimination, which, in its first article, lists preference for citizens based on nationality, citizenship, and naturalization, as well as special measures taken to care for certain groups (racial or ethnic) or individuals in need of protection to ensure their equality in the enjoyment or exercise of human rights and fundamental freedoms.

At the level of internal law, there are many examples, starting with the supreme document, which is the Constitution. For example, what is stated in Article 31 bis, created by Law 08_19²⁰ It states: "The state shall work to promote women's political rights by expanding their opportunities for representation in elected councils." This text was enshrined in Law 12_03, which specifies the methods for expanding women's opportunities in elected councils.²¹ This law embodies the so-called principle of positive discrimination, a system that seeks to create a degree of equality between the sexes by ensuring a minimum quota (i.e., number of seats) in elected bodies to increase the percentage of women's representation within these bodies.

Another example can be pointed out regarding the disabled "people of determination". They may be subject to discrimination of restriction and deprivation, as they may be subject to discrimination of preference over others because of their disability. In both cases, the discrimination is justified, as in many cases they may not be allowed to hold job positions, especially those that require certain abilities and physical fitness. We find that Law 02_09 related to the protection and promotion of people with disabilities in Algeria²² It includes many articles that allow this group to be given preference over other members of society.

Conclusion:

Based on what has been presented in this research, we note the following:

- Article 3 of Law 20-05 included cases of justifications related to the crime of discrimination, which is the same as Article 295 bis 3. The legislator has not introduced anything new except for the exception of nationality. The issue lies in the fact that the legislator restricted the crime of discrimination to specific justifications limited to the field of employment and hiring only. If we apply the principle

that a specific rule restricts a general one, Article 39 becomes inapplicable regarding the crime of discrimination, as the priority is given to the specific text, which is Article 3. This is illogical because there are many justifications not included in the latter, and Article 39 remains applicable to them.

- It would be preferable for the legislator to repeal Article 3 and refer directly to the application of Article 39 of the Penal Code, or there is another option which consists of adding the phrase "No act permitted by the applicable law shall be considered discrimination" to Article 2 in its second paragraph, which addresses the definition of the crime of discrimination.

References

1. Article 37 states: "All citizens are equal before the law and have the right to equal protection. No discrimination may be invoked on the basis of birth, race, gender, opinion, or any other personal or social condition or circumstance." See: Presidential Decree No. 20_442 dated 12/30/2020 regarding the Constitutional Amendment of 2020, Official Bulletin No. 82 dated 12/30/2020.
2. Order No. 66-156 of June 8, 1966, amending and supplementing the Penal Code. Official Bulletin No. 49 of June 11, 1966.
3. Law No. 20-05 of April 28, 2020, on the prevention and combating of discrimination and hate speech, Official Bulletin No. 25 of April 29, 2020.
4. Ali Bin Hadiya and others, *The New Dictionary for Students*, Algeria: National Book Foundation, 1991, pp. 1177 and 1175.
5. Larousse, *Dictionnaire de Français*, Edition Larousse, France, 2001, p. 12
6. Oxford, *World Power*, published by Oxford university press, 2nd Edition, 2010, p 229
7. Hassina Sharoun, *Reasons for Legalizing the Crime of Discrimination in the Algerian Penal Code*, Journal of Legal and Political Sciences, Issue 12, Faculty of Law and Political Science, University of Martyr Hamma Lakhdar, El Oued, January 2016, p. 11.
8. Comprehensive Dictionary of Meanings - Arabic-Arabic Dictionary, <https://www.almaany.com/ar/dict/ar-ar>
9. Refer to Article 4 of the Agreement. <http://www.ohchr.org>
10. Hasina Sharoun, the previous reference, p. 11.
11. Hasina Sharoun, *opcit*, p. 12.
12. Article 2 of Law 2005 defines the crime of discrimination, and it corresponds to the first paragraph of Article 295 bis 1 of the repealed Penal Code. As for the second and third paragraphs related to the penalty part of the latter, they correspond to Article 30 of Law 2005. In other words, in the latter law, the legislator separated between the definition of the crime and the penalty designated for it.
13. Ibn Manzur, *Lisan al-Arab*, Volume 1, Part 9, Cairo, p. 348.
14. Kamal Saeed, *Explanation of General Provisions in the Penal Code*, 1st ed., Dar Al Thaqafa, Jordan, 2002, p. 127.
15. See Article 39 of Order No. 66_156, *opcit*.

16. Farid Rouabah, *Lectures in General Criminal Law*, Mohamed Lamine Debaghine University, Faculty of Law and Political Science, Setif, 2018-2019, p. 86.
17. Ahsen Bousguia, *A Concise Guide to General Criminal Law*, 13th ed., Dar Houma, Algeria, 2013, p. 167.
18. Articles 295 bis 1, paragraphs 2 and 3, and 295 bis 2 relate to the penalties prescribed for committing the crime of discrimination.
19. Hasina Sharon, previous reference, p. 14.
20. Law No. 08-19 of November 15, 2008 amending the Constitution, Official Bulletin, No. 63, issued on November 16, 2008.
21. Organic Law 12_03, dated January 12, 2012, defining the modalities for expanding women's representation in elected councils, Official Bulletin, No. 01, issued on January 14, 2012.
22. Law 02-09, dated May 8, 2002, relating to the protection and promotion of persons with disabilities in Algeria, Official Bulletin, and No. 34, issued on May 14, 2002.