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Legal measures taken to combat the COVID-19 coronavirus pandemic in Algeria

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Abstract:

The danger of coronaviruses lies in their ease of transmission, which greatly increases the risk of severe respiratory infections. This pandemic, which affected the entire world, required the implementation of initial measures, most of which were taken in the absence of any legal framework. The fear and confusion caused worldwide by the rapid spread of this virus led the political authorities in Algeria to announce a lockdown, followed by the declaration of a public health emergency.

As a result, the competent authorities adopted a series of measures to combat the coronavirus, with the aim of limiting its spread and effectively managing the crisis. These measures ranged from the criminalisation of certain behaviours to the restriction of certain freedoms, in particular freedom of movement, freedom of assembly and economic freedom, in order to adapt to the situation and protect public health.

Keywords: Coronavirus, COVID-19, pandemic, lockdown.

INTRODUCTION

The COVID-19 pandemic has created a global health emergency and economic crisis unlike any other in history. Governments facing this threat are in uncharted territory. The pandemic is spreading rapidly and poses a unique set of containment challenges. The virus was first discovered in Wuhan, China, in late December 2019 and has quickly spread around the world. As an animal-borne virus, COVID-19 is easily transmitted, even when people do not show symptoms. This makes case detection difficult and reduces the motivation of many infected individuals to limit their activities. The deaths associated with COVID-19 are primarily among the elderly and those with underlying medical conditions, which can lead to negative externalities in the attitudes and behaviours of young people towards older adults.

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Most countries have been forced to take urgent or extraordinary measures that would not normally be allowed under the existing legal framework. They have been forced to relax certain legal provisions on freedoms to make way for more restrictive provisions that limit freedoms, all in accordance with the International Health Regulations set out by the World Health Organisation.

In order to contain the spread of COVID-19, Algeria has taken numerous measures to protect public health, which is an expression of the public order that the authorities must maintain, especially in exceptional circumstances. The government issued several executive decrees containing various measures aimed at criminalising certain acts that violate established protocols, thereby reducing physical contact between citizens as part of social distancing measures for a certain period of time. These measures also included the imposition of lockdown systems and the restriction of certain freedoms and rights, in particular freedom of movement and the right of assembly.

From the above, we ask the following question:

What legal measures has the state taken to face the COVID-19 pandemic?

Chapter One: Proactive measures

Proactive measures refer¹ to the imposition of restrictions and preventive procedures on individual rights by the competent administrative authorities, through regulatory or individual decisions, in accordance with the specific circumstances faced by the country due to the spread of the COVID-19 pandemic. These measures include taking the initiative to plan ahead to contain the outbreak, considering that the administrative authorities responsible for regulatory measures have the primary role of guaranteeing the right to life as a fundamental human right that takes precedence over other individual and collective rights, in addition to the right to physical security linked to the right to health². The legislator has dedicated an entire section to prevention in Law 18-11 of 2 July 2018 on health, which defines its objectives in Article 34 as follows:

- To reduce the impact of disease determinants.
- Prevent the emergence of diseases.
- To stop the spread of diseases and mitigate their effects.

Section One: Preventive criminalisation

Preventive criminalisation³ is of great importance during epidemics and natural disasters, given the increased efforts of states to protect the lives and physical security of individuals as a supreme human right. The importance of preventive criminalisation in the context of the COVID-19 pandemic is evident in the extensive measures taken by many countries, including Algeria. However, the efforts of the state alone are not enough to curb the spread of the virus in the absence of individual responsibility to comply with the measures announced. This has led to a reluctance on the part of Algerian individuals to adopt preventive measures on a voluntary basis, forcing the Algerian authorities to resort to deterrence by criminalising the violation of the established preventive obligations⁴.

Section One: Definition of the offence of endangering others through the transmission of COVID-19

Executive Decree 70-20, which outlines additional measures to prevent and control the spread of the coronavirus⁵, and Executive Decree 20-127, which mandates the wearing of protective masks⁶, refer to the application of penalties for violators under the Penal Code⁷. This is stipulated in Article 8 of Law 20-06, which amends and supplements the Penal Code with Article 290 bis, which states that

“Anyone who endangers the life and physical safety of others by deliberately and obviously violating the necessary precautionary duties or safety measures imposed by law or regulation shall be punished by imprisonment for a term of 6 months to 2 years and a fine of DZD 60,000 to DZD 200,000. If the aforementioned acts are committed during a state of lockdown or during a natural or biological disaster or other calamities, the punishment shall be imprisonment for a term of 3 to 5 years and a fine of DZD 300,000 to 500,000”.

With these measures, the State aims to take control of the pandemic with proactive preventive measures to contain and limit its spread, which is one of the main characteristics of this virus due to its rapid transmission. This measure, which is characterised by its dissuasive nature, underlines that the human element is the main cause, whether intentional or unintentional, when the established measures are violated, sometimes out of mockery, ignorance or neglect, such as not wearing a mask. In addition, an individual may intentionally or unintentionally transmit the virus to others with whom they have interacted in different places and on different occasions.

Section Two: Penalties imposed

The legislator has established penalties for the offence of endangering others, which differ between natural and legal persons, and between offences committed in normal circumstances and those committed in exceptional circumstances. In addition, the classification of the offence as a misdemeanour or an infraction affects the sanctions.

Article 8 of Law 20-06, Article 290 bis, which refers to the offence of endangering others and their physical safety, states that a natural person who intentionally and clearly violates the precautionary or safety duties imposed by law or regulation shall be punished by imprisonment for a term of between 6 months and 2 years and a fine of between DZD 60,000 and DZD 200,000⁸.

The above penalty is aggravated if the offence is committed during a period of lockdown or during a natural, biological, technological or other disaster. In such cases, the penalty for a natural person is imprisonment for a term of 3 to 5 years and a fine of DZD 300,000 to DZD 500,000⁹.

Legal persons who commit this offence are punished in accordance with the provisions of the Criminal Code, which generally imposes fines many times higher than those applicable to natural persons, as well as additional penalties that may include a total or temporary ban on the activity in question¹⁰.

In addition, the offence of endangering the life and physical safety of others is classified as a misdemeanour under Article 290 bis and as an infraction under Article 459 of the Criminal Code¹¹. The latter article states: “Whoever violates the decrees or decisions lawfully issued by the administrative authority, which are not subject to specific penal provisions, shall be punished by a fine of between DZD 10,000 and DZD 20,000, and may also be punished by imprisonment for a maximum of three days”. The provisions of the aforementioned Criminal Code apply to those who violate executive decrees and administrative decisions implementing preventive measures against the spread of the COVID-19 pandemic, including Executive Decree 20-127, which mandates the wearing of protective masks as a means of preventing the spread of the virus¹².

Section Two: Restrictions on freedom

Under the principle that “necessity knows no law”, countries often resort to exceptional measures and procedures to protect public order, including public health,

which was threatened by the global spread of the COVID-19 pandemic. The measures announced by Algeria consisted of a series of successive executive decrees restricting certain fundamental and individual freedoms.

In particular, these restrictions affected economic freedom with regard to certain commercial activities, as well as freedom of movement, with total or partial bans on the movement of individuals, accompanied by some exceptions. Freedom of assembly was also restricted by the prohibition of all social, political, sporting, cultural and other gatherings¹³.

Section One: Border Closure

This is a precautionary measure to prevent citizens of countries where an outbreak has occurred from entering the jurisdiction. This begins with the closure of airports and extends to the complete closure of all points of entry into the country (air, land and sea). The closure of borders is one of the most important measures to limit the spread of the virus and control it by stopping flights to and from affected countries, as Algeria is not a country of origin of the virus.

On Sunday 15 March, Algeria announced the closure of its borders as of 19 March. In an address to the nation on 10 March 2020, the Algerian President outlined a series of decisions to contain the spread of COVID-19, including the closure of all borders: “All land borders with neighbouring countries will be closed, with the possibility of allowing the movement of individuals in exceptional cases, subject to agreements with the governments of the countries concerned. Immediate suspension of all flights to and from Algeria, with the exception of cargo flights not carrying passengers, as well as the immediate suspension of maritime navigation and transport, with the exception of cargo vessels¹⁴.

Section Two: Limitation of contact

This measure has been implemented by countries to prevent the mixing of people and slow down the spread of infection. It focuses on preventive measures and early surveillance to identify and contain infected cases, thereby reducing the spread of the virus and easing the burden on health facilities.

Gathering places such as cafes, clubs, museums and other cultural and sports venues have been closed, as have mosques and shopping centres. We summarise these measures as follows:

- Restrictions on freedom of movement: Executive Decree 20-69¹⁵ indirectly restricted freedom of movement by suspending all land, air and sea transport. Executive Decree 20-70 directly restricted freedom of movement through the objectives listed in Article 05, with the exceptions specified in this decree:
- Public passenger air transport services on the domestic network: This includes the suspension of all domestic passenger flights.
- Surface transport in all directions: This includes urban, semi-urban, inter-urban and inter-state services.
- Passenger rail transport: All rail passenger services have been discontinued.
- Directed transport: This refers to metro, tram and lift services, which were also restricted.
- Collective transport by taxi: Taxi services were restricted in order to reduce contact between individuals.
- Restrictions on commercial activities and gatherings: This measure included the closure of shops selling beverages, as well as entertainment and exhibition venues and restaurants. All retail activities were restricted, with the exception of shops providing essential food supplies such as bakeries, dairy shops, grocery stores, fruit, vegetables, meat, maintenance and cleaning services, and pharmaceutical activities. It was also allowed for food vendors to operate on a rotating basis, subject to distance measures, which will be discussed later. All these businesses were allowed to move in order to carry out their activities, in addition to shops offering home delivery services. This restriction applied to major cities and could be extended to other cities and activities by decision of the governor concerned, including a ban on gatherings¹⁶, the closure of all mosques and a ban on weddings and any kind of celebrations, as well as the closure of all educational institutions at all levels¹⁷.
- Granting exceptional leave: This was another measure to prevent mixing and slow the pace of infection. It was necessary to place as many public sector employees as possible who could be temporarily spared on special leave. As a result, at least 50% of the staff in each public institution and administration were placed on special paid leave¹⁸, with the exception of employees in the health sector, national security, civil protection and other vital sectors whose services could not be spared. The competent authorities to which the exempted employees belonged could authorise them to take

advantage of this leave. Priority for exceptional leave was given to pregnant women, women responsible for the care of their young children and persons suffering from chronic illness or fragile health¹⁹.

Chapter Two: Public health measures

Proactive or preventive measures alone are not sufficient to contain the spread of the pandemic; they are the first line of defence. It is essential that additional measures to mitigate or reduce the impact of the crisis are announced as soon as possible. Health authorities must implement a range of precautionary measures, such as isolation, quarantine and home confinement, to contain the spread of infectious diseases and reduce the likelihood of transmission to uninfected individuals.

Section One:

The term “quarantine” is not mentioned in the Algerian Constitution or in various other legal texts, except for the International Health Regulations (IHR) of 2005, which the legislator highlighted in article 42 of law 18-11 on public health. This article states that the prevention and control of diseases of international spread shall be governed by the provisions of the International Health Regulations of the World Health Organisation. Presidential Decree No. 13-293 of 4 August 2013 was issued to publish the International Health Regulations (2005), adopted in Geneva on 23 May 2005.

The definition of quarantine is outlined in Article 2 of the International Health Regulations, annexed to the aforementioned Presidential Decree, which states that “quarantine refers to the intensification of activities concerning persons who are not ill but suspected of being infected, as well as luggage, containers, means of transport or goods suspected of being contaminated. It involves the separation of such persons from others and/or the separation of luggage, containers, means of transport or goods from others in such a way as to prevent the possibility of the spread of infection or contamination²⁰.

However, the link between quarantine and an epidemic situation, on the one hand, and its classification as an exceptional measure derogating from the normal state, on the other, requires that its adaptation be sought within the framework of the following two articles of the Constitution²¹.

-Article 66 states that health care is a right for citizens and that the state is responsible for preventing and combating infectious and epidemic diseases.

-Article 107 gives the President the power to declare a state of emergency in the event of an imminent threat to the State and its institutions.

In this context, a general lockdown becomes a situation of necessity that requires the application of the theory of exceptional circumstances, known in English jurisprudence as “public emergency”²².

Given the severity and rapid spread of the COVID-19 pandemic, many countries have resorted to imposing home confinement. This system differs from quarantine in that the latter applies to healthy people who do not show symptoms of illness but are suspected of being infected with the coronavirus. These individuals are quarantined while their needs and necessities are met until they have completed the full incubation period to ensure their safety, after which they are released to their homes.

Home confinement, on the other hand, is primarily for people infected with the virus who are stable and do not require hospitalisation. They are isolated in a well-ventilated room in their home, ensuring that they do not mix with other family members and taking all necessary precautions to prevent transmission of the disease, such as wearing masks and maintaining safe distances, until the full incubation period is over.

According to Executive Decree No. 20-70, the concept of home confinement is completely different from the definition commonly used during outbreaks of infectious diseases. It applies to all persons without exception in order to prevent the spread of infection. During the period of confinement, movement is restricted both to and from the relevant states or municipalities and within their territorial boundaries, except in cases permitted by the regulations²³. There are two types of home confinement: total home confinement and partial home confinement.

Section One: Total house arrest

Total home confinement refers to the obligation of persons to remain in their homes or places of residence throughout the day for a specified period of time, taking into account the exceptional cases set out in Article 6 of Executive Decree No. 20-70, which require a permit for legal movement²⁴. This type of confinement was initially applied in the province of Blida, which was recognised as an epidemic zone and was most affected by the virus. It was lifted following a reduction in the number of infections, in accordance with Executive Decree No. 20-102²⁵ of 23 April 2020, which replaced total confinement with partial confinement.

Section Two: Partial home confinement

Partial home confinement involves the obligation for individuals to remain in their homes during prescribed hours set by the authorities. This system was introduced in the capital, Algiers, from 7 p.m. to 5 a.m. under Article 13 of Executive Decree No. 20-70. It was then extended to other provinces throughout the country, with different times depending on the number of infections. This was formalised by Executive Decree No. 20-72 of 22 April 2020, which established the parameters for partial confinement, taking into account the implementation of other preventive measures under Executive Decree No. 20-86²⁶.

Section Three: Additional measures

In addition to the quarantine measures, the authorities implemented other health-related measures, focusing primarily on mental health initiatives aimed at combating misinformation and rumours that could cause fear and panic among the public. Given the initially unknown and evolving nature of the pandemic, the government acted swiftly to address the shortage of health workers due to fatigue and stress caused by the overwhelming number of cases, which exceeded the capacity of the health workforce.

Section One: Mental health measures (tackling rumours)

The fear of contracting the disease and the panic it causes can provide fertile ground for the spread of rumours and false information about the outbreak, the number of infections and the mortality rate. During the COVID-19 pandemic, modern communication tools, particularly social media, were used to spread lies, prompting the Algerian legislature to introduce a misdemeanour for spreading false news.

Article 196 bis of Law 20-06, which amends the Penal Code, criminalises the deliberate publication or dissemination to the public of false or malicious news likely to undermine public security and order. Penalties include imprisonment for between 1 and 3 years and a fine of between DZD 100,000 and DZD 300,000, with the penalty being doubled in the event of a repeat offence.

Although the text of the article is general and does not explicitly refer to the spread of the coronavirus, its timing coincided with the outbreak of the pandemic. As noted above, misinformation had been rife for several years.

During a meeting to discuss the amendment of the penal code under Law 20-06, the Algerian Minister of Justice explicitly stated that the exceptional health circumstances resulting from the COVID-19 outbreak had been exploited to spread false news aimed at creating an atmosphere of fear and panic among citizens, which could ultimately threaten public security²⁷.

Section Two: Measures to protect human resources in the health sector

The phenomenon of verbal and physical assaults on medical and paramedical staff, as well as administrative staff and even members of the public, in hospitals has recently escalated significantly. Although such behaviour is not new, it has increased in intensity since the outbreak of COVID-19, and is often perpetrated by the families of patients or victims who are impatiently awaiting the completion of procedures to release the bodies of the deceased in accordance with preventive measures, or who object to the medical care their relatives receive in hospitals and clinics.

In response to this alarming trend, the higher authorities recognised the need to protect medical personnel from repeated attacks in the exercise of their duties. This led to the criminalisation of such acts and the increase in the penalties provided for in Law 06-20, which amends and supplements the Penal Code.

The new provisions introduced by this law provide criminal protection against verbal and physical assault for all personnel in public and private health institutions. Specifically, the penalties for verbal assault against health workers can reach up to five years²⁸ imprisonment, while physical assault can result in up to 20 years' imprisonment²⁹. In addition, the law criminalises the destruction of real and movable property belonging to health institutions and addresses the misuse of social media in this context³⁰.

Conclusion

In addition to the proactive and preventive measures taken by the State, a number of health-related measures have been introduced through the improvement of the legal framework. These included several successive executive decrees and amendments to the sanctions of Law 06-20, which aimed to fill the legal gap in the management of crises arising from exceptional circumstances requiring the protection of public safety and health, and to penalise violations of the measures established. This approach is in line with the challenges posed by the spread of the COVID-19 pandemic.

However, the measures imposed by the state are characterised as a restriction of individual freedoms and a violation of certain rights. The justification for imposing such measures is based on the legal basis for declaring a public health emergency. Therefore, it is necessary to amend and supplement health legislation to include provisions for declaring a public health emergency in cases of serious infectious diseases and epidemics. This will provide a legal framework for the intervention of the relevant government authorities and ensure the legitimacy of the measures deemed necessary and applicable nationwide to combat COVID-19, thereby protecting public health from its consequences.

It is important to note that while these measures may infringe some rights and freedoms, the considerations surrounding a public health emergency justify such action. The public interest is the guiding principle for these exceptional measures, which may be adopted through executive decrees or regulatory decisions. Such measures are more effective in achieving timely intervention to prevent and limit the spread of the virus, given their simplicity and freedom from bureaucratic formalities.

Footnotes:

¹- Article 43: “The State shall establish sectoral and joint health measures aimed at protecting citizens from diseases of international spread.” Law No. 18-11 of 20 July 2018 on health, Official Journal of Algeria, No. 46, published on 29 July 2018.

²- same reference.

³- Preventive criminalisation: defined as the provision of criminal protection for the right to life and physical security of individuals, in order to prevent them from being exposed to danger. See Khaled Majid Abdul Hamid Al-Jubouri, *General Theory of Preventive Criminalization*, 1st edition, Arab Center for Publishing and Distribution, Egypt, 2018, p. 9.

⁴- Bashir Dali and Asma Boukhari: “The Role of Legal Mechanisms in Protecting Individuals from the COVID-19 Virus Pandemic”, Algerian Journal of Rights and Political Sciences, Vol. 05, No. 03 Special Issue (2020), Algeria, p. 150.

⁵- Executive Decree 20-70: Of 24 March 2020, establishing complementary measures to prevent the spread of COVID-19, Official Journal of Algeria, No. 16, published on 24 March 2020.

⁶- Decree No. 20-127: Adopted on 20 May 2020, amending and supplementing Decree No. 20-70 on preventive measures against COVID-19, Official Journal of Algeria No. 30, published on 21 May 2020.

⁷- Law 20-06: Of 28 April 2020, amending and supplementing Decree No. 66-156 of 8 June 1966 on the Penal Code, Official Journal of Algeria, No. 25, published on 29 April 2020.

⁸- Article 290, paragraph 1: Of Law 20-06 of the aforementioned Penal Code.

⁹- Article 290, paragraph 2: Of the same law.

¹⁰- Article 290: General provisions.

¹¹- See article 9 of law 20-06: Which amends the provisions of Article 459 of Decree 66-156 on the Penal Code.

¹²- Halima Ben Dissa: “Preventive Criminalisation as a Mechanism for Criminal Liability for Violating Quarantine Measures and Endangering Others by Transmitting COVID-19: A study in the light of recent developments in Algerian criminal law”, Algerian University Annals, Vol. 34, Special Issue: Law and the COVID-19 Pandemic, p. 700.

¹³- Ahssen Ghabi: “The Role of Administrative Control Measures in Reducing the Spread of the COVID-19 Virus Pandemic”, Algeria University Annals, Vol. 34, Special Issue: Law and the COVID-19 Pandemic, p. 14.

¹⁴- Algerian News Agency: “President Tebboune announces a series of decisions to curb the spread of COVID-19 in Algeria”, www.aps.dz/ar/algerie accessed 9 March 2021, 15:20.

¹⁵- Decree No. 20-69: Dated 21 March 2020, concerning preventive measures against the spread of COVID-19, Official Journal of Algeria, No. 15, published on 21 March 2020.

¹⁶- Article 03 of Decree No. 20-69 and Article 11 of Decree No. 20-70: Relevant provisions concerning preventive measures.

¹⁷- Article 10, last paragraph: Relevant provisions for the enforcement of the measures of Executive Decree 20-69.

¹⁸- Articles 6, 7 and 8: Additional measures detailed in Executive Decree 20-69.

¹⁹- Abdel-Sadek Sheikh: “The Role of Administrative Control in Preventing the Spread of the COVID-19 Pandemic”, Algeria University Annals, Vol. 34, Special Issue: Law and the COVID-19 Pandemic, p. 57.

²⁰- Abdel-Sadek Sheikh, *op. cit.*, p. 58.

²¹- Law No. 16-01: Dated 6 March 2016, concerning the amendment of the Constitution, Official Gazette No. 14, published in March 2016.

²²- Nadia Ait Malek and Alia Mena: “The legal adaptation of the measures taken in response to the COVID-19 pandemic and its impact on the fundamental rights of individuals”, Algeria University Annals, Vol. 34, Special Issue: Law and the COVID-19 Pandemic, p. 123.

²³- Abdel-Sadek Sheikh, *op. cit.*, p. 60.

²⁴- Article 6 of Decree 20-70: This article sets out the conditions under which persons may be authorised to move, taking into account the preventive measures taken by the health authorities against the spread of COVID-19. Authorised movements include

- To obtain supplies from authorised stores.
- For urgent medical needs.
- For authorised professional activities.

The procedures for issuing permits will be determined by the local committee responsible for coordinating sectoral activities to prevent and combat the pandemic, as referred to in Article 7.

²⁵- Executive Decree No. 20-102: Issued on 23 April 2020, this decree extends the measures of partial home confinement as part of the efforts to prevent and combat the spread of COVID-19, with adjustments to the times, Official Journal of Algeria, No. 24, published on 24 April 2020.

²⁶- Bashir Dali and Asma Boukhari, *op. cit.*, p. 149.

²⁷- Wafa Chiaoui and Hamid Zaabat: “Criminalisation as a Preventive Measure to Face the COVID-19 Pandemic”, Virtual International Conference on COVID-19: A New Challenge for Law, 18-19 September 2020, Berlin, p. 535.

²⁸- Article 149 of Law 20-06: Amendments and additions to the Penal Code, cited above.

²⁹- Articles 149 bis, 149 bis 1 and 149 bis 6: Additional provisions relating to the same law.

³⁰- Articles 149 bis 2 and 149 bis 3: Further provisions within the amended Penal Code.