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Contributions of Tunisian Penal Legislation to Combating the Crime of Racial Discrimination: Confirmed and Faltering

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Abstract

The analytical reading of Tunisian Law dated 2018 relating to the crime of racial discrimination confirms the definite contribution of penal legislation in combating this dangerous crime for society and humanity, through the diversity of sources of criminalization and through expanding the circle of crimes by adopting the technique of open criminality. However, a critical reading confirms that his fight against the wound of racial discrimination in Tunisia appears to be insufficient and has remained faltering, at the level of prosecution and punishment, such as restricting litigation and filing criminal complaints before the national judiciary, as well as excluding the public prosecution from filing a public lawsuit for the crime of racial discrimination. Among the deficiencies and weaknesses of this legislation is that its text violates the principle of proportionality and is ambiguous in applying the principle of recurring crimes.

Keywords: Tunisian penal legislation, crime**,** racial discrimination, law

Introduction

Racial discrimination is an ancient and renewed phenomenon that still exists in all societies, taking various forms and forms, despite the affirmation of international agreements and treaties, especially the Universal Declaration of Human Rights, which affirms that “human beings are born free and equal in dignity and rights, and that every human being has the right to enjoy all the rights and freedoms established therein , without discrimination, particularly on grounds of race, color or national origin.” Non-discrimination between human beings is considered one of the basic principles upon which the human rights system is based, which is characterized by universality and seeks to guarantee the dignity of the human being as a human being without restrictions or conditions. It is an effective means adopted by the legislator to protect society from the dangers of crime, including the crime of racial discrimination. The Tunisian legislator was exposed to the crime of racial discrimination in Law no. 50 of 2018 dated 23 October 2018.

Racial discrimination is defined in the International Convention on the Elimination of All Forms of Racial Discrimination. Which was ratified by the Republic of Tunisia in 1967 as “any discrimination, exclusion, restriction or preference based on race, color, descent or national or ethnic origin that aims or entails the disruption or impeding of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”

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This international definition was adopted by the Tunisian legislator in text of law dated 23 October2018 relating to the elimination of all forms of racial discrimination. It is the first Tunisian law specifically for crimes of racial discrimination, although the Tunisian state was one of the first countries to ratify the Racial Discrimination Convention and had the precedence in suppressing a form of racial discrimination by prohibiting slavery and the enslavement of human beings since 1846.

We kept waiting until the year 2018 for the issuance of the law that explicitly criminalized various forms of racial discrimination. This law came late and under pressure from international institutions and civil society organizations, especially with The phenomenon of irregular migration of sub-Saharan Africans to Tunisia, and so that Tunisia is not subject to any criticism, whether at the international or national level, regarding the level of human rights protection.

This is despite the fact that the Tunisian legislator was the first to issue laws criminalizing racial discrimination, the most important of which is the 2018 law, which did not receive the same attention as some laws. Through it, the legislator sought to confront the phenomenon of racial discrimination, which has become a threat to human dignity and basic rights, despite the fact that the international community today dedicates The so-called universality of human rights. Discrimination, whatever its forms, is considered a blatant assault on this dignity and an attack on the principle of equality among all Human beings, regardless of their ethnic, religious or cultural affiliation...have the right to enjoy equal protection without any distinction or discrimination. The various constitutions that passed in our country emphasized the consecration of the principle of equality before the law, and the previous constitution issued in 2014 emphasized equality without any discrimination, which was also explicitly enshrined in the Constitution of 25 July 2022.

Research problem

Through this arsenal of laws, whether international or national, various countries sought to develop a comprehensive legal approach based on the universality of human rights in an effort to address the phenomenon of racial discrimination. The criminalization mechanism is considered one of the methods adopted to confront discrimination, which raises the following problem: To what extent has the criminal law contributed to combating racial discrimination? The position of the Tunisian Penal Code on racial discrimination is evident in its proven fight against these crimes, but its contribution remains faltering.

Research Methodology

The descriptive analytical approach was used to clarify the position of Tunisian criminal law in its fight against the crime of racial discrimination. The text of the law dated 2018 related to this crime was analyzed, and the criminal legal techniques adopted by the Tunisian legislator for this were explained.

Literature Review

The Tunisian legislator has engaged in a system of human rights based on universality, which relied on upholding the banner of human self-dignity and the belief that all human beings belong to the human race without any discrimination. Therefore, he sought to criminalize racial discrimination, and the sources of criminalization varied between international and domestic. At the international level, Tunisia ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 13 January 1967, and committed itself to further supporting universal human rights, but it did not incorporate this agreement into its national law, as the Penal Code did not include any provisions on crimes of racial discrimination, unlike some legislation (e.g. Swiss law stipulates the criminalization of racial discrimination within the Penal Code, article 261).

However, the legislature criminalized racial discrimination for the first time after the Freedom and Dignity Revolution in 2011, pursuant to Decree no. 115 of 2011 dated 2 November 2011 relating to freedom of the press, printing and publishing. Tunisia is the first country in North Africa to enact a law criminalizing various forms of racial discrimination. It is considered a pioneering law that, through the criminal law, was able to fill several legal loopholes that deprived victims of racial discrimination of resorting to the judiciary for several years. Before this law, victims of discrimination were vulnerable to racism, especially those with black skin. They were confronted with the model imposed on them by society and were exposed to all forms of discrimination. In all fields, especially in the states of the South and in some regions, through the use of discriminatory expressions that are used to this day, such as the phrases “wassif,” “kahloush,” “al-Ubaid,” and “the ancient.”

This research analyzes the position of Tunisian law on the crime of racial discrimination, as there were no specialized studies and research on this subject after the issuance of the law no 50 of 2018 dated 23 October 2018, as no problems or discussions related to the crime of racism in Tunisian societal reality or even at the legal jurisprudential level were raised before 2024, especially today and after the issuance of the new Tunisian constitution dated 25 July 2022, the subject has become a subject of societal and, accordingly, legal debate.

Part one: The contributions of the criminal law to combating racial discrimination are confirmed

Penal law is considered one of the legislative mechanisms approved to protect human dignity from various racist attacks, and it definitely contributes to confronting them. This is evident through the diversity of sources of criminalization and through expanding the circle of crimes by adopting the technique of open crime.

1.Diversity of sources of criminalization of racial discrimination

Tunisian law criminalized racial discrimination in Chapters 52 and 69, which criminalize incitement to hatred and incitement to hatred between races and religions. According to these texts, the instigator has become an original, moral actor, even though the legislator initially enshrines the theory of the original, material actor, and the moral actor is punished as an original actor in some exceptional cases (Chapter 52 of Decree no. 115 of 2011 stipulates the following: “Anyone who directly calls, by any of the means stipulated in Chapter 50 of this decree, to hatred between races, religions, or populations, shall be punished by imprisonment from one to three years and a fine of one thousand to two thousand dinars.” By inciting discrimination...This includes incitement to terrorism, Chapter 5 of Law No. 2015-26 of 7August 2015 relating to combating terrorism and preventing money laundering, as amended pursuant to Basic Law No. 2019-9 of 23 January 2019, Law No. 2016-61 of 3 August 2016 relating to preventing Human Trafficking, Chapter 9 thereof, as well as Chapter 237 AD relating to the crime of kidnapping persons and Chapter 101 AD. C and 101 duplicates from the same code).

This reflects the legislator’s will to combat the crime of racial discrimination and expand the scope of criminal accountability to include all those who contribute to committing this type of crime, which constitutes a serious threat to human rights that the state is obligated to protect, and this is a positive obligation. As it is committed to enacting laws criminalizing discrimination, Law no. 50 dated 23 October 2018 was issued, which is the first law directly related to racial discrimination, in which the legislator criminalized various forms of racial discrimination. What we criticize is the fact that this law came too late in terms of time if we look at the date of Tunisia’s ratification of the International Convention on the Elimination of Various Forms of Racial Discrimination. It was issued approximately 51 years after this date and after the abolition of slavery and the enslavement of humans since 1846. It came as a result of pressure exerted by international institutions and civil society organizations against the backdrop of attacks and discriminatory practices that appeared, especially during the 2011 revolution. It came in implementation of the Tunisian state’s commitments and its involvement in general trends aimed at further strengthening human rights and respecting his dignity and humanity, regardless of any race. Or religion, language, gender, or regardless of any discrimination.

Victims of racial discrimination were victims of a legislative system that did not recognize their right to resort to justice and access to justice, and thus they were exposed to double discrimination. For these serious reasons, the 2018 law came to criminalize various discriminatory attacks and provide victims with an opportunity to defend their rights and protect their dignity. It also came to restore dignity to these victims.

Consequently, the Penal Code has definitely contributed to confronting racial discrimination and emphasizing that all Tunisians enjoy the status of citizenship regardless of their religious and ethnic differences, regardless of the

color of their skin and language, and protecting their dignity, which is the basis of rights. Criminalizing discrimination is based on protecting dignity, because discrimination cancels dignity and disrespecting dignity cancels it rights. Therefore, it was necessary to abolish all discriminatory laws that contradict the principle of dignity, and this is what was enshrined in France through the French Constitutional Council, which considered that free assistance to foreigners who reside illegally in the territory of France falls within the so-called principle of "brotherhood" and cannot expose the perpetrator to prosecution. The French are free to help others out of humanitarian motives. Whatever their situation, the principle of "fraternity" contained in the motto of the French Republic was consecrated for the first time by Resolution no. 2018-718/717 of 6 July 2018.

Achieving this development requires the focus of the Constitutional Court, which has the power to abolish all discriminatory laws. The penal code today is rich in racial discrimination and its sources are diverse, which contributes to confronting the phenomenon of racial discrimination, especially since the new Tunisian constitution dated 25 /7/2022 explicitly enshrines the principle of non-discrimination. Law no. 50 of 2018 remains a historic law as it explicitly recognizes crimes of racial discrimination. These various laws sought to address the phenomenon of racial discrimination by expanding the scope of criminalization.

2. Implementing open crime technology to address crimes of racial discrimination

Anyone who studies Law No. 50 of 2018 regarding the elimination of all forms of racial discrimination will notice the penal legislator's keenness to confront racial discrimination and respect the dignity of humanity through his use of the technique of open criminality.

It should be noted that the open criminality technique is exceptionally used by the criminal law in some areas that constitute a threat to society or that are characterized by constant movement, such as the field of terrorist crimes, the field of political crimes, the field of economic crimes, and the means of committing the crime, using broad and loose terms capable of accommodating several acts and bringing them under penalty of punishment. Criminalization and punishment.

This is what we conclude through the 2018 law, as the penal legislator was keen to use broad terms from that in Chapter 2 of this law. He uses the phrase "racial discrimination, within the meaning of this law, means any distinction, exception, restriction, or preference based on race, color, lineage, or origin." National, ethnic, or other forms of racial discrimination...Here, the law's phrase "other forms of racial discrimination" is a broad and loose phrase that took the material element of the crime from stagnation and clarity to movement and ambiguity. This legal formulation sparked critical jurisprudential reactions.

Some commentators of the law considered this a violation of the principle of legality of crimes and punishments. As the penal legislator devoted an expanded

concept to the crime of racial discrimination, and this expanded method was adopted by the legislator since the title of the 2018 law. He used the phrase “eliminating all forms of racial discrimination,” which explains that the penal law has a definite desire to accommodate all old and new manifestations of discrimination.

Also confirming that these crimes are characterized by movement and continuous development according to times and places and are affected by the various changes that the world is witnessing today. Despite the tremendous technological development, discriminatory practices still exist in human societies in the world, even if only in relative terms. The contemporary multi-ethnic society is threatened by racist ideology, so the legislator had to confirm its keenness to keep up with the various attacks that constitute racial discrimination by adopting an open criminality method, and this is what justifies its violation of the principle of the legitimacy of crimes and punishments. Which requires, in principle, to be precise and clear when drafting penal texts, that is, the necessity of clearly stipulating all elements of criminalization and the nature and amount of the punishment required.

This indicates that the contribution of the criminal law in confronting crimes of racial discrimination is confirmed by adopting a moving concept of crimes of racial discrimination that encompasses all forms of racial discrimination, regardless of their nature or the means used to commit them. Chapter 8 of the aforementioned law stipulates that “the penalty shall be imprisonment from one month to one year and a fine of five hundred to one thousand dinars.”. “Anyone who commits an act or makes a statement that includes racial discrimination within the meaning of Chapter 2 of this law with the intent of contempt or undermining dignity.”

Our legal reading makes us note that the legislator did not specify the type of acts that constitute racial discrimination and only required that the motive for these acts be to undermine dignity or contempt. Here another peculiarity of racial discrimination crimes appears, which is that the motive becomes a component of the crime, although in principle the motives do not affect criminalization and punishment because they are subjective and the legal rules are general and abstract.

The legislator also criminalized it in Chapter 9 of the same law by explicitly saying, “Anyone who commits one of the following acts shall be punished:

- Incitement to hatred, violence, discrimination, segregation, or isolation, or the threat thereof, against any person or group of persons based on racial discrimination.
- Spreading ideas based on racial discrimination, racial superiority, or racial hatred by any means.

The same chapter includes collective acts of supporting and financing activities or organizations of a racist nature. Our legal analysis of these legal texts leads to the conclusion that the penal legislator used inaccurate concepts, which makes them capable of accommodating most of the crimes of racial discrimination possible. This would open the door for the criminal judge to adopt a broad interpretation of the penal text and go beyond the traditional requirements of the principle of legitimacy of crimes and punishments.

The explanation for this violation of the principle of criminal legality is justified by the seriousness of crimes of racial discrimination and the desire of the penal law to confront them, even if the matter leads to violating some of the fundamental principles that govern the penal article, because the nature of these acts conflicts with the stability and permanence of the penal rules. They are constantly evolving acts, so a quick reaction must be taken to absorb all their forms, and this will not be through the rigid application of the principle of the legitimacy of crimes and punishments.

These acts constituting the crimes of racial discrimination are stipulated in Chapter 2 of the law, which are "any distinction, restriction, or preference based on race, color, lineage, or other forms of racial discrimination, in complete harmony with what is stipulated in international treaties. These terms are broad and loose and can be interpreted as It has several interpretations and accommodates several attacks that differ according to the methods adopted to implement them. This is an approach adopted by the penal legislator to enhance the protection of human dignity and confront various discriminatory attacks. It should be noted that this same approach was adopted by the penal legislator when he explained the basis of these discriminatory acts, meaning the motives that made the person or group commit these crimes, which are racial motives and may be linked to color or lineage. He adopted inaccurate phrases that are capable of encompassing all the motives behind the commission of these crimes. Assaults.

This same method, which is the method of open criminality, was adopted by the legislator when talking about the results that the perpetrator of racial discrimination crimes seeks to achieve, which is "disabling, obstructing, or depriving the enjoyment of rights and freedoms or exercising them on an equal footing, or resulting in imposing additional duties or burdens...". Here we conclude that the legislator uses terms that enable the criminal judge to adopt broad discretionary power, which he does not usually enjoy in the criminal field. Every act related to discrimination falls under the penalty of this law. This may pose a difficulty in determining the elements of the crime of racial discrimination, as every act carried out of racist tendencies is considered a crime, and this is what some see as a threat to the principle of the legitimacy of crimes and punishments, resulting in a threat to rights and freedoms.

However, in reality, this is considered a softening of the principle of criminal legality and not a violation in the narrow sense, because protecting basic freedoms and human dignity requires that the criminal law address discriminatory attacks, even if that is by introducing some amendments to some traditional principles, including the principle of legality of crimes and punishments, which cannot remain conservative. Its sanctity is due to the development of crime and the necessity of confronting racial discrimination by adopting modern mechanisms. Here, the role of the judge must be contrary to the fundamentalist rules because he will find himself faced with broad texts that allow him broad interpretation and give him a

creative role to contribute to combating crimes of racial discrimination in the most effective way. But all that we have mentioned leads us to say that all the contributions of the criminal law in confronting the crime of racial discrimination, even if they actually exist, were not effective enough.

Part two: The contributions of the criminal law to combating racial discrimination remained faltering

Although the penal law seeks to address racial discrimination through the mechanism of criminalization, its goals of achieving human dignity and guaranteeing basic freedoms and rights have not yet been achieved, and its contributions have remained faltering. This is what we notice at the level of enjoining crimes of racial discrimination through shortcomings at the level of tracking and punishment rules.

1.Deficiencies in tracking crimes of racial discrimination

The Penal Code talked about tracking with regard to crimes of racial discrimination in Chapter Three of Law No. 50 of 2018 under the title "Procedures" in Chapters 6 and 7. It must be emphasized here that one of the real contributions of the criminal law at this level is the recognition of the victim status of those affected by discriminatory attacks and enabling them to resort to the judiciary for redress and to seek justice.

1.1. Limiting the excitement of criminal prosecution from the victim

In order to ensure the effectiveness of this, victims must be enabled to exercise their right to litigation on an equal footing and without discrimination. Chapter 6 of this law affirms that prosecution for crimes. Racial discrimination depends on a complaint by the aggrieved person personally or through his guardian if he is a minor or incapacitated. This is considered an exception because the principle, according to Chapter 3 of the Code of Criminal Procedure, stipulates that a public lawsuit does not depend on the existence of a complaint except in exceptional cases, as it is raised and practiced by the Public Prosecution according to Chapter 2 of this same code. This means that the racial discrimination lawsuit depends on the victim's complaint, which affects the effectiveness of tracking these discriminatory crimes, whose fate remains linked to the victim.

This is further evidence of the lenient attitude of the criminal law towards the perpetrators of crimes of racial discrimination, which are in fact a serious assault on a person's humanity and dignity, so why does it remain dependent on the will of the victim? Why does the Public Prosecution not take the initiative to file a public lawsuit resulting from crimes of racial discrimination so as not to allow the perpetrators of these acts to escape punishment? The answer is clear: in most situations, the victims of these discriminatory crimes are in a psychologically and financially fragile situation. This may prevent them from exercising their right to litigation, especially when it comes to foreigners, as most of them do not have

enough money to cover the expenses of litigation, such as appointing a lawyer and others, and this is known in all countries.

In addition, the law dated 2018 did not receive attention from the media, unlike the violence against women law of 2017, so it remained unknown to the general public, and there was not sufficient awareness and dissemination of information regarding the possibility of litigation on the basis of crimes of racial discrimination so there are very few cases before it. The criminal judiciary on the issue of racial discrimination and the first court ruling of conviction in implementation of the aforementioned law dated 2018 is the misdemeanor ruling issued by the district court in Sfax on 2/5/2019 under no.62196 (Samah, B. 2020-2021). which ruled three months in prison and a fine of three hundred dinars for uttering discriminatory statements committed by a female guardian of a student against a black teacher, based on chapter 8 of the law. It is possible to comment on this judicial ruling, which is a bold and pioneering ruling in this type of specific crimes, but it was not strict and it was not firm because it granted this woman the pleasure of postponing the implementation of the punishment in accordance with the principle of individualizing punishment.

It should be noted that one of the rulings that was praised in Tunisia and abroad was the ruling issued by the Court of First Instance in Medenine on 14 October 2020, where the court authorized an eighty-year-old citizen to delete a discriminatory reference to his surname that referred to a status inherited from a freed slave known as "antiq." Despite this, tracking remains incomplete in the criminal law and cases remain rare. The criminal judge must play a role in this field and base his rulings on the universality of human rights and contribute to restoring dignity to victims of racial discrimination, a role emphasized by the law. The aim of this is to facilitate victims' recourse to justice and justice by establishing programs to train judges, judicial police officers, prison staff and reform staff in the field of human rights to effectively confront crimes of racial discrimination.

1.2. Limiting judicial jurisdiction to national courts

Legal jurisprudence and human rights defenders also raised the presence of other shortcomings of a procedural nature that hinder the effective response to crimes of racial discrimination, including the inability to file a complaint against the Tunisian state and the limitation to filing lawsuits before the national judiciary and the Tunisian courts for crimes committed by private individuals. Although the current Tunisian Constitution explicitly stipulates the supremacy of the international convention over the laws, and despite the fact that Chapter 14 of the International Convention against Racial Discrimination affirms that "any State Party may declare at any time that it recognizes the competence of the victim to receive and study the means provided by individuals or From groups of individuals within the jurisdiction of this State Party who claim to be victims of any violation by it of any of the rights established in this Convention, and the Committee may not

accept receipt of any communication relating to any State Party that has not made such a declaration."

Referring to the law, we do not find any trace of this declaration with the official authorities in the country, which enables its citizens to complain to the United Nations Committee on the Elimination of Racial Discrimination. Which means that it does not procedurally allow these victims to file a grievance with it after exhausting the litigation before the national courts. It should be noted that citizens were enabled to resort to such a procedure in relation to the International Convention on the Elimination of All Forms of Discrimination against Women, in accordance with the Optional Protocol attached to the Convention issued on 9 October 1999. This legal jurisprudence side believes that rejecting this complaint mechanism would affect the effectiveness of the criminal law in confronting crimes of racial discrimination, which may affect the rights of victims, especially ethnic minorities such as the Amazigh, black people, and religious minorities.

2. Shortcomings at the level of racial discrimination punishment

Punishment is the penalty enacted by the legislator against whoever commits the crime and violates the rules of the criminal law. Its functions have evolved to go from deterrence, both private and general, to trying to reform the criminal and reintegrate him into society. It is legally known that punishment is governed by a number of principles, including the principle of proportionality between the seriousness of the committed act and the punishment due to it.

2.1. Violation of the principle of proportionality

A legal reading of the provisions of Law no. 50 dated 2018 relating to the elimination of all forms of racial discrimination confirms that the legislator approved a set of penalties that are not consistent with the principle of proportionality in Part Four of it, Chapters 8, 9 and 10. Racial discrimination crimes were initially classified as moderately serious misdemeanors, for which the penalty of deprivation of liberty ranges initially from one month to three years, and the fine ranges from five hundred dinars to fifteen thousand dinars, despite the fact that legal jurisprudence and those involved in the law agree that crimes of racial discrimination constitute serious assaults on self-dignity. Humanity is the basis of all rights.

We also note that the Penal Code provides reduced penalties for this type of crime, even though it explicitly recognizes the criminal liability of the legal entity in this type of crime. This is considered a development in the field of criminal responsibility because our legislator does not enshrine a general principle within the penal code in which the legal entity is held criminally accountable, and it is limited to some scattered texts where this responsibility exists in an exceptional manner. However, the law it was incomplete at this level and was satisfied with financial penalties against the legal entity, as Chapter 10 of this law stipulates: "If the perpetrator of the acts stipulated in Chapter Nine above is a legal entity, the fine penalty shall be from five thousand to fifteen thousand dinars..." Here, the moral

self is only threatened by sin, and this affects the effectiveness of confronting the phenomenon of racial discrimination.

The penal legislature did not stipulate complementary penalties against the moral entity, and the 2018 law did not include the penalty of stopping the activity of the moral entity that commits or incites racist attacks, or dissolving them. These are effective penalties that are in line with the nature of these entities. This is in contrast to the situation for other crimes, including the crime of human trafficking, as it Chapter 20 of the Human Trafficking Prevention Law affirms the deprivation of the legal entity from carrying out its activity. For a maximum period of five years and the possibility of dissolving it, i.e. executing its existence, which are the same penalties approved by the legislator for terrorist crimes, which are included in Chapter 7 of the Anti-Terrorism and Money Laundering Law. We note that the legislator's position on crimes of racial discrimination is not as strict with regard to the moral entity as is the case with regard to terrorist crimes. Or the crime of human trafficking. Even the value of the fines seems high compared to crimes of racial discrimination, as it is represented by the same value of the money obtained from these crimes and is not less than five times the value of the fine imposed on a natural person.

The penal law has not adequately addressed these crimes based on racial discrimination, despite their seriousness. Combating them is still faltering. If a moral entity is found carrying out discriminatory attacks and spreading ideas of racial superiority or insulting through racist practices, it is not logical not to solve them, and the judge cannot impose a penalty in which the text is absent, out of respect for the principle. The legality of crimes and penalties except in the case of referring to the Associations Law.

We also find these shortcomings at the level of penalties imposed for crimes of racial discrimination for natural persons, as they are light penalties compared to the seriousness of discriminatory attacks. The 2018 law creates some aggravating circumstances in the event that the victim of discrimination is a child, or if the victim is in a vulnerable state due to age, health condition, immigration, or asylum, or if the discriminatory acts were committed by a person who has authority over the victim or who exploited the influence of his position or If the discriminatory act was committed by several people, whether as original perpetrators or participants. Despite this, these penalties remain incomplete, especially since the legislator gave the judge the choice between the penalty of deprivation of liberty or fine, in Chapters 8 and 9 of this law, and this would empty these penalties of their content.

2.2. The problem of applying the principle of recurring crimes

Among the problems raised at the level of punishments for crimes of racial discrimination are practical problems related to the co-occurrence of racial discrimination crimes. The law was characterized by the use of broad and broad terms that made the possibility of co-occurrence with other crimes posing several difficulties. For example, Chapter 9 criminalizes the dissemination of ideas based

on racial discrimination, racial superiority, or hatred by any means, and we find Chapter 59 of Decree no. 115 of 2011 dated 2 November 2011, criminalizing the call for hatred among people. Races, religions, and populations, by inciting discrimination by resorting to the various means of publication specified in Chapter 50 of this decree.

In this case, the Criminal Court will apply Chapter 54 of the Penal Code, which stipulates the application of the most severe penalty. Here the judge will find it difficult to determine what is the more severe punishment as stipulated in Chapter Nine, which is imprisonment from one year to three years and a fine from one thousand to three thousand dinars, or one of the two punishments, or Chapter 59. From the Press Decree, which approves the same prison sentence and a fine of less than two thousand dinars, here the punishment will be more severe in Chapter 9 of the 2018 Law, but the option makes it lighter compared to Chapter 59 mentioned above. In this case, the judge will restore the application of the Racial Discrimination Law, which constitutes a threat to the effectiveness of the response. For crimes of racial discrimination, because, for example, the deadlines for filing a public lawsuit are shorter for press crimes, which are six months, according to Chapter 76 of the Press Decree.

This is in addition to depriving the victim of racial discrimination of the legal protection provided by the 2018 law. This continuity between discrimination crimes also exists with terrorist crimes in Chapter 14 and with crimes of violence against women in Chapters 19 and 20 of the 2017 law, which leads to affecting the effectiveness of the law. 2018 and stands as an obstacle to combating crimes of racial discrimination. This weakness in the legislation allows it to be said that the position of the criminal law on discrimination crimes does not reflect the presence of a firm and strict legislative will to combat the phenomenon of racial discrimination, which makes the law lose its effectiveness.

The Tunisian legislator usually adopts the approach of choosing between financial punishment and deprivation of liberty in violations that are crimes of low severity. Does this mean that crimes of racial discrimination do not constitute a danger from the point of view of the Tunisian legislator, who bet on human rights and ratified most of the international agreements affirming the universality of human rights? This matter contains a contradiction between the Tunisian state's approaches in the field of human rights and the position of the criminal law on crimes of racial discrimination.

Therefore, it is necessary to review these legislative texts, the law dated 2018, in the direction of promoting and strengthening human rights, protecting human dignity, deterring all attacks against the principle of non-discrimination, and enshrining this principle in the penal code, especially since we note that the legislator envisaged a strict deterrent approach towards crimes of racial discrimination, if they were committed in the country. It remains a terrorist crime within the meaning of Chapter 14 of the law dated 2015. It consisted of "inciting or calling for hatred or hatred between races, religions, and sects...." The penalty for

which could reach life imprisonment if it caused very serious bodily harm, or twenty years of imprisonment if it involved severe or mild violence against someone. The meaning of Chapters 218 and 319 of the Penal Code; it is necessary to change the penal policy towards crimes of racial discrimination and overcome the shortcomings in the law.

Conclusion and Recommendations

The law, in its serious and consistent fight against the crime of racial discrimination, is distinguished by the Tunisian legislator's explicit recognition of the criminal liability of the legal entity for the crime of racial discrimination. This is considered a development in the field of criminal responsibility because the legislator does not enshrine a general principle within the penal code in which the legal entity is held criminally accountable, and it is limited to some scattered texts where this responsibility exists in an exceptional manner. We suggest here, first, that the penal legislator revise the 2018 law and stipulate complementary penalties against the moral entity, such as the penalty of stopping the activity of the moral entity or dissolving it whenever it is judicially proven that it commits racist attacks or incites them.

Secondly, we must expedite to overcome the shortcomings and remove the ambiguity present in the text of these law with the aim of resolving the practical difficulties that the judiciary finds in implementing this law.

Thirdly, it is necessary to develop a program of legislative reform, which in our opinion calls for the need to develop initiatives in the form of a special program to combat the crime of racial discrimination, which is a successful mechanism that was applied in the United States of America in the field of drug control (RSAT). (Pamela.kl.2020).

It is known among legal scholars that the criminal law in Tunisia today needs such reflections and proposals in a comprehensive reform process of criminal legislation and criminal justice. There is no doubt that these theoretical proposals and constructive criticism of the law dated 2018 in order to revise it and further contribute to the criminal law in combating crime in general in society require, above all, asking this question that criminal law jurists in comparative law asked in the search for criminal justice reform: "How can we improve the effectiveness of criminal justice reform efforts?" (Charis. E. K & Rebecca, T. 2022).

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