

The procedural framework for criminal settlement in misdemeanors and infractions under Algerian legislation in light of Ordinance 15/ 02

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Abstract:

This study aims to highlight the importance of the contemporary criminal policy adopted by the Algerian legislator in establishing the system of criminal reconciliation. This system defines its scope and mechanisms for application in order to reduce the number of cases brought before the judiciary beyond its capacity and resources. Criminal reconciliation is considered an effective means to enhance efficiency and justice in handling misdemeanor and infraction cases. It seeks to resolve disputes without the need for lengthy traditional judicial procedures. Therefore, expanding the use of this system has become necessary, as it is regarded as one of the key solutions to address the crisis in criminal justice.

Keywords: Contemporary criminal policy; Criminal reconciliation; Criminal justice crisis; Dispute resolution; Infractions; Misdemeanors.

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I. INTRODUCTION

Both developing and developed countries, regardless of their differing ideologies, suffer from the phenomenon of punitive inflation. This phenomenon is a natural result of the excessive use of punitive measures by legislators to address new forms of criminal behavior. Punitive inflation poses a challenge to both developing and developed nations alike, as it arises from the excessive imposition of criminal penalties by government authorities. This has negatively impacted the effectiveness of criminal justice, plunging it into a severe crisis that has left it in urgent need of assistance. The overuse of punitive measures has created tremendous pressure on court systems, making them incapable of managing the numerous cases before them. This results in violations of the rights of the parties involved, particularly concerning the speed of proceedings, the prompt resolution of cases, and the achievement of the desired justice.

The Importance of Study:

The importance of the study lies in its alignment with contemporary trends in criminal policy. Previously, the focus was on deterrence and imposing penalties as the primary means of addressing crime. However, modern criminal policy now aims primarily at rehabilitating the offender and providing opportunities for reintegration into society, rather than merely depriving them of their freedom. This shift seeks to avoid the negative consequences associated with traditional punitive systems. It aims for a deeper understanding of the social and psychological roots of crime and addresses them comprehensively, rather than focusing solely on harsh punishment.

Moreover, this approach also includes repairing the harm caused to the victim, reflecting a significant shift towards enhancing victim rights and their active participation in criminal justice processes. This clearly highlights the failure of traditional criminal justice systems to achieve their intended purposes. As a result, jurisprudential trends have emerged advocating for a more appropriate response to crimes and the imposition of non-traditional penalties that fit the severity of the crime and the resulting harm. These trends call for adopting more flexible and quicker alternatives for resolving disputes with minimal cost and time, and for activating the role of individuals within the justice system. Additionally, these alternatives aim to limit criminal prosecutions and serve as substitutes for public lawsuits, representing a key direction in modern penal policy.

Research Objectives:

This study aims to highlight an important aspect of modern criminal justice, focusing on the activation of restorative justice principles based on voluntary and conciliatory approaches, and the use of alternative mechanisms to criminal prosecution for resolving criminal disputes. The system of criminal reconciliation is one of the most prominent of these alternatives. It is an old legal and procedural system adopted by most legislations, based on managing public prosecution through a specific method that includes paying a monetary amount to the state, compensating the victim, or accepting other measures in exchange for the termination of the public prosecution. The main objective is to address various issues that arise when applying criminal reconciliation in cases of misdemeanors and infractions.

Research Problem:

Through the above this leads us to raise the problem of our main study which is the following question

Did the Algerian legislator, through Ordinance 15/02, manage to provide an effective

alternative to traditional judicial procedures in cases of misdemeanors and violations ?

the methodology used:

To address the study's issue, we relied on both the descriptive and analytical methodologies, which align with the nature of the subject of penal reconciliation. This involved clarifying certain concepts related to criminal reconciliation in Algerian legislation and its applications, as well as analyzing the legal texts that address this mechanism.

Based on the above and to achieve the desired results from the study, we divided our research topic into the following sections:

Section One: Criminal Reconciliation in Customs and Banking Crimes

Section Two: Criminal Reconciliation in Tax Crimes, Pricing Crimes, and Competition Crimes

Section Three: Criminal Reconciliation in Traffic Crimes and Crimes of Assault on Individuals

Section One: Criminal Reconciliation in Customs and Banking Crimes

Legislation has been enacted to apply criminal reconciliation in customs offenses. This includes defining the types of crimes eligible for reconciliation and specifying the conditions that must be met for such reconciliation. We will also explain the concept of criminal reconciliation as it pertains to banking crimes

Firstly: Criminal Reconciliation in Customs Crimes

The Algerian legislator has authorized criminal reconciliation in customs offenses according to Article 265 of the Algerian Customs Law. As a general rule, all customs crimes can be subject to reconciliation, except for those specifically excluded by a special provision. Examples of such crimes include violations detected during the import or export of goods through customs offices, such as unauthorized import or export and import or export with fraudulent declarations (Article 75 of the Algerian Customs Law).

In contrast, the French legislator has permitted criminal reconciliation in all customs offenses as specified in Article 350 of the French Customs Code (Perrier & Sophie de Cacqueray, 2015).

The Algerian legislator defined the concept of a customs violation in Article 240 bis of the Customs Law as follows: "A customs violation is any breach of the laws and regulations administered by the customs authorities and penalized by this law." Additionally, Article 5, paragraph "k" of the Customs Law defines customs laws and regulations as: "A collection of legislative and regulatory provisions that govern customs operations in general and ensure the organization of customs-related activities according to the specified legal standards." (Rabhi, 2023)

1- The definition of customs reconciliation is:

An administrative measure in which the customs administration has broad discretionary powers, representing a waiver of some of its legally established rights. It is a privilege allowing the administration to avoid and resolve disputes either before or after a judgment.

2-Characteristics of Customs Reconciliation:

The legal nature of customs reconciliation is ambiguous due to the lack of explicit definition by the legislator and its overlap with other legal actions. Therefore, it is essential to clarify this ambiguity to determine the applicable legal framework. The legal system to be applied is determined based on its legal nature, considering whether it is to be classified as a contract on one hand or as a penalty on the other. (Hamdi, 1997)

3 -Types of Customs Reconciliation:

3.1- Compliance Reconciliation:

This type involves the accused admitting to a customs offense, acknowledging the accuracy of the actions attributed to them, and, on the other hand, committing to the conditions for resolving the customs dispute. (Al-Hakim, 2009)

3.2- Provisional Reconciliation:

Provisional reconciliation involves the offender agreeing to accept a subsequent administrative decision by paying the amount specified by the customs administration upon request. This is formalized through a written document that includes the offender's acknowledgment and acceptance of the reconciliation, as well as payment of the prescribed fines. This procedure is used in specific cases such as: when the case exceeds the authority of the person handling the settlement, when reconciliation requires intervention from specific committees, or when the case cannot be immediately referred to the competent authority for a decision. (Abdali & Hamza Jbaily, 2013)

3.3- Final Reconciliation:

Final reconciliation is the result of official intervention by the competent administrative authority, aimed at resolving the dispute according to the agreement reached between the offender and the relevant authority. It is determined based on the terms for ending the dispute in accordance with the applicable laws. Through this reconciliation, the dispute is resolved definitively, and the agreed amounts are paid. The customs administration is then required to lift the seizure on the detained goods unless they are subject to confiscation. Additionally, the customs administration sends a copy of the final reconciliation agreement to the court to halt any legal proceedings against the offender. (CREN, 2011)

4- Crimes Eligible for Reconciliation

Algerian customs legislation requires that the crime be of a customs nature to be eligible for reconciliation. Initially, all customs offenses could be reconciled. However, since the issuance of Order No. 05/06 dated August 23, 2005, concerning the fight against smuggling, which was amended and supplemented in 2006, the Algerian legislator narrowed the scope of reconciliation. Reconciliation was restricted to a specific category: offenses detected during the import and export of goods through customs offices, excluding customs smuggling offenses as outlined in Article 21 of this order.

The Algerian legislator revised this stance after 15 years, allowing reconciliation in smuggling cases again through Article 86 of Law No. 19/14 dated December 11, 2020(34).

The 2020 Finance Law includes amendments to the title of paragraph 12 of Chapter Four of Order 05/06 concerning the fight against smuggling, which has been revised to: "On Reconciliation." Additionally, Article 87 of this law amended Article 21 of Order 05/06, thereby allowing reconciliation in smuggling offenses as specified in

the order, in accordance with the provisions of customs legislation and regulations. (Meftah, 2012/2011)

In Algerian legislation, the principle is to allow reconciliation in all customs offenses, given the diversity and abundance of these offenses. To determine which offenses are eligible for reconciliation, we will rely on two main criteria: the nature of the crime and its legal description.

4.1- Customs Crimes by Nature:

According to this criterion, customs crimes are classified into two main categories: smuggling activities and import/export activities without authorization. These activities are described by the Algerian legislator in the 1998 Law as "violations detected at customs offices during inspection and monitoring operations," in addition to other violations.

Regarding Smuggling Activities:

Article 324 of the Algerian Customs Law defines smuggling as the import or export of goods outside customs offices in violation of the provisions of Articles 25, 51, 60, 64, 221, 222, 223, 225, 225 bis, and 226 of this law.

Smuggling includes:

- Reducing the quantity of goods described under the transit system.
- Fraudulent unloading and loading of goods.

Smuggling is also defined by Professors Nabil Saqr and Kamroui Azedine :

The entry of goods into or their exit from the country in a manner that contravenes applicable legislation, without paying customs duties and other fees and taxes either partially or fully, or in violation of prohibitions and restrictions stipulated by this law or other laws and regulations." (Saqr & Kamroui Azedine, 2008)

From this, we can deduce that smuggling takes two forms:

A -Actual Smuggling: This involves the import or export of goods outside customs offices.

B -Constructive Smuggling: This is considered smuggling by legal definition, where the act is deemed smuggling according to the law, even if it does not involve direct evasion of customs procedures.(Shaath, 2016/2017)

Real smuggling: This is the most common form of smuggling, whether it involves infringing on the state's tax or non-tax interests. It is realized by introducing or exporting goods subject to customs duties into or out of the country without paying these duties or by importing or exporting goods that the law prohibits." (Shaaban, 2000)

Presumptive smuggling: Article 324 of the Algerian Customs Law outlines several situations that are not considered smuggling in themselves. However, the legislator has classified them as such, referring to these cases as 'presumptive smuggling'—smuggling that occurs according to legal rules." (Bousquia, 2001)

- Regarding import and export activities without a permit:

The procedures are carried out by passing the goods through the customs office without the need to declare them to customs officers, as stipulated by Articles 75, 76, 86, and 168 of Law No. 98-10 dated August 22, 1998, concerning customs. These are among the violations addressed at customs offices or centers (Al-Lamsawi and Ashraf Fayyad Al-Lamsawi). Various forms of these violations are detailed by the Algerian legislator in Articles 325, 319, and 320 of the Customs Code (1998).

4.2 - The customs crime according to its penal description:

According to this standard, customs crimes are divided into contraventions and misdemeanors under Article 318 of the Customs Code. A customs violation includes all crimes where the goods involved are neither prohibited nor subject to high duties. The Algerian legislator has classified these into five categories in Articles 319 to 323 of the Customs Code. Customs misdemeanors are specified in Articles 324 to 325 and are divided into four levels. A crime is considered a misdemeanor if the goods involved are prohibited or subject to high duties. Thus, the Algerian legislator has clarified customs crimes requiring penal reconciliation, categorizing them into violations and misdemeanors (Nada, 2008).

Referring to Article 265 of the Customs Code and Article 21, Paragraph 02 of Order 06/05 related to combating smuggling, the Algerian legislator has specified cases where reconciliation is not permitted. These include smuggling crimes involving subsidized goods such as widely consumed food products (e.g., wheat, semolina, dry grains, vegetable oil, white sugar, coffee, tea, milk in bags, flour, bread, meat, medicines, sheep feed) and refined petroleum products (e.g., fuel, gas), as well as weapons, ammunition, and drugs. This is further detailed in Article 21, Paragraph 02 of Order 06/05 and Paragraph 3 of Article 265, which states that reconciliation is not allowed for crimes involving prohibited goods as defined in Paragraph 1 of Article 21 of the Customs Code (Bousquia, 2013).

5 - Customs Reconciliation Regulations

While tax revenues contribute to providing financial resources to meet the state's needs, the customs field is even more significant as it serves a dual purpose. The first goal is to generate financial resources, while the second goal is to protect national economic wealth and limit unfair competition (Al-Mubaidin, 2005).

Since penal reconciliation is generally a procedural legal system that constitutes an exception to the general rules of criminal law—where the Public Prosecution is obligated to initiate and pursue criminal proceedings as the representative of society, without having the authority to suspend, delay, or waive them either for compensation or otherwise except in cases specified by law—penal reconciliation must be interpreted narrowly as an exception and not be broadly applied. Given that customs reconciliation is an exception to the general principle of terminating criminal proceedings, many comparative legislations, including Algerian, French, and Egyptian laws, allow the use of the reconciliation system as a specific cause for the termination of criminal proceedings and as an alternative to these procedures (Al-Mubaidin, 2005).

6 - Effects of Customs Reconciliation:

Customs reconciliation has undergone significant changes due to amendments in customs law. From December 31, 1962, to June 17, 1975, it led to the termination of both criminal and tax proceedings. However, after the 1975 amendment to the Penal Procedure Code, reconciliation was no longer permissible for criminal matters, though it continued for customs offenses under the term 'administrative settlement.' This required the violator to pay all financial penalties, costs, and other customs obligations. Despite this, reconciliation during this period did not result in the termination of criminal proceedings (Farid, 2019).

With the enactment of the 1983 Finance Law, the administrative settlement procedure experienced significant development. The legislator no longer required full payment of all financial penalties for reconciliation, indicating the possibility of reducing these penalties. Additionally, the 1986 amendment to the Penal Procedure

Code introduced Article 6, which states: 'Criminal proceedings may also be terminated by reconciliation if explicitly permitted by law.' Consequently, during this phase, the termination of criminal proceedings became one of the effects of customs reconciliation.

However, according to the 2017 amendment under Law 17-04, Article 110, which revised Article 265 of the same law, customs reconciliation is not permissible after a final court judgment on the customs violation subject to reconciliation. Even if reconciliation occurs beforehand, it only results in penal exemptions without affecting the termination of criminal proceedings. Due to a noticeable decline in the collection of customs rights and fines because reconciliation was not allowed after a final judgment, the 2019 Finance Law, Article 75, reintroduced the possibility of customs reconciliation even after a final court ruling. Thus, two cases can be distinguished: the first is when reconciliation leads to the termination of both criminal and tax proceedings before a final judgment; the second is when reconciliation occurs after a final judgment, which does not affect imprisonment, fines, or other costs (Manal and Ben Aisha Abdelmajid, 2021).

Second: Criminal Settlement in Banking Crimes:

Currency crimes in Algerian legislation are among the most significant offenses due to their impact on the national economy and the disruption of transactions. These economic crimes obstruct the state's economic plans, negatively affect currency value, and weaken its economic value. Economic crimes are defined as criminal acts that directly infringe upon a legally protected economic interest (Halima and Mohamed Salah Boutotane, 2019). Algerian legislation, under Law 96-22, provides specific provisions for these crimes, including the possibility of reconciliation in such cases.

1 - Definition of Banking Transactions:

The Algerian legislator defined banking transactions based on their content. According to Article 110 of Law 90-10 related to currency and credit: 'Banking transactions include receiving deposits from the public, loan operations, providing payment instruments to clients, and managing these instruments' (Islam and Nasser Abdelhak, 2021-2022).

Additionally, Article 116 of the same law stipulates that banks and financial institutions may conduct ancillary operations related to their activities, such as:

- Currency exchange operations.
- Transactions involving gold, precious metals, and valuable coins.
- Investing in negotiable securities and all financial assets, including underwriting, purchasing, managing, safeguarding, and selling them.

Given the economic and financial importance of banking law in Algeria, most definitions describe banking law as 'a set of legal rules related to banking operations and the individuals who professionally conduct these operations' (Laicheb, 2001).

2 - Legislative Evolution of Reconciliation in Currency Crimes:

Reconciliation in currency crimes has undergone three phases concerning its permissibility, which we will briefly outline below:

2.1 - The Permissibility Phase:

This phase spans from January 1963 to June 17, 1975, and can be divided into two categories:

The first period extends from January 1963 to December 31,12,1969:

Under Law 62-157 dated December 31,12,1962 which maintained French legislation unless it conflicted with national sovereignty, French laws were extended in Algeria, including those addressing currency crimes. These were governed by Order No. 45-1088 of May 30,05,1945 which distinguished reconciliation in currency crimes.

The second period extends from December 31,12, 1969 with the enactment of the 1970 Finance Law:

Article 53 of this law allowed the Minister of Finance and Planning or his authorized representatives to conduct reconciliation with perpetrators of currency crimes under conditions set by the minister (Bousquia, 2021).

2.2 - The Prohibition Phase:

This phase spans from June 17,06,1975 to December 29,12, 1986:

During this phase, Order No. 75-46 of June 17,06, 1975, amending and supplementing Order No. 66-165 of June 8,06,1966, which contained the Penal Procedure Code, was issued. This amendment revised the final paragraph of Article 6 of the Penal Procedure Code to explicitly prohibit reconciliation in criminal matters.

This prohibition was solidified in the realm of currency crimes by repealing the provisions of the 1970 Finance Law that permitted reconciliation and incorporating currency crimes into the Penal Code, specifically in Articles 424 to 426 bis.

This amendment was made under Order No. 75-47 of June 17,06, 1975 which amended and supplemented Order No. 66-156 of June 8,06,1966 containing the Penal Code.

Under Order No. 75-47, the legislator abandoned the principle of reconciliation in the area of currency crimes in line with the provisions of Order No. 75-46. However, this was only a formal change, as reconciliation continued to be practically applied to misdemeanors that could be settled, provided the value of the offense did not exceed 30,000 DZD.

2.3-Phase of re-certification:

The actual phase of reconciliation in foreign exchange offenses began with the issuance of Law No. 86-15 dated December 29-12 1986, which included the Finance Law for 1987. Initially, its scope was limited to offenses related to foreign exchange discrepancies. Reconciliation became available for all types of foreign exchange offenses with the issuance of Ordinance No. 96-22 dated July 07-09,1996 concerning the suppression of violations of foreign exchange legislation and capital movement regulations. However, the legislator partially reconsidered the admissibility of reconciliation following the issuance of Ordinance No. 10-03 dated August 26,08, 2010. (Khalafi & Abdel Rahman, 2021)

3-Conditions for Reconciliation in Foreign Exchange Matters:

Reconciliation is a legal tool provided by the legislator, available to any offender. Those who commit violations can benefit from it with authorization from public authorities. Reconciliation in the field of foreign exchange is subject to both substantive and procedural conditions, which are outlined as follows.

3.1- Substantive Conditions:

The conditions are specified by law, and until the amendment of Ordinance 16-22 by Ordinance 10-03 in 2010, reconciliation was permitted without restrictions.

However, following the 2010 amendment and the introduction of Article 09 bis 1, reconciliation is now prohibited in four specific cases:

- If the value of the offense amounts to 20 million DZD, reconciliation is not permitted.
- In the case of repeated offenses by the perpetrator, reconciliation is not permitted.
- If the offender has previously benefited from a settlement agreement, reconciliation is not permitted.
- If the foreign exchange offense is related to money laundering, drug trafficking, corruption, organized crime, or transnational organized crime, reconciliation is not permitted. (Bouskia, Reconciliation in Criminal Matters Generally and Customs Matters Specifically, 2013)

3.2- Procedural Conditions:

The procedural conditions include formal requirements for reconciliation, such as the format of the request, submission deadlines, and the competent authorities to review it. According to Article 03 of Executive Decree 11-34 reconciliation is a right for the offender, and its mention in the report by officials is a mandatory formal procedure. However, the authorities have discretion in accepting or rejecting the request, even if it is valid, and may choose not to respond. Silence is considered a rejection, not acceptance. (At-Tahir, no publication year)

A- Conditions for the Request Submitted by the Offender:

To ensure acceptance of the request by the administration, it must meet several conditions:

- **Request Format:** Follow the prescribed format for the application.
- **Submission Deadline:** Submit the request within the specified timeframe.
- **Deposit of Guarantee:** Attach a guarantee or security deposit with the application if required.
- **Correct Submission:** Address the request to the appropriate authority or department as specified by regulations

✓ Form of the Request Submitted by the Offender:

Article 02 of Executive Decree No. 11-35 does not specify a particular format for the request, whether written or oral. However, the request must clearly express the offender's desire for reconciliation with the administration and must be submitted by a legally authorized individual. Additionally, it should include a copy of the offender's criminal record and a deposit receipt for the guarantee.

✓ Submission Deadlines and Processing:

According to Article 03 of Executive Decree No. 11-34 and Article 09 bis 02 of Ordinance 10-03, the request must be submitted within a maximum of 30 days from the date of detecting the violation. The committee must make a decision on the request within 6 days from the date of notification by the offender, without imposing any penalties for the delay.

If the request is submitted after the 30-day period, or if it is late beyond that timeframe, the legislator has specified a penalty for this violation. It is also noteworthy that the legislator has not established a penalty for the committee's failure to decide within 60 days from the date of notification.

According to Article 03 of Executive Decree No. 11-34 and Article 09 bis 02 of Ordinance 10-03, necessary actions must be taken within thirty days from the date of detecting the violation. The committee must make a decision on the request within a maximum of six days from the date it is notified of the request. Additionally, the decision must be clearly specified and a copy of it should be sent to the competent Public Prosecutor as soon as possible.

When submitting the reconciliation request, a guarantee equal to 200% of the value of the offense must also be deposited. This guarantee should be submitted to the designated public accountant for collection, in accordance with Article 03 of Decree No. 11-35. (Hassouna & Amina Rihani, 2018)

✓ **Authority to Receive the Request:**

The competent authorities for receiving and reviewing the request vary based on the value of the offense. According to Article 09 bis of Ordinance 10-03, there are two reconciliation committees:

- National Reconciliation Committee
- Local Reconciliation Committee

Local Reconciliation Committee:

According to Article 09 bis of Ordinance 10-03 and Article 06 of Executive Decree No. 11-35, the Local Reconciliation Committee is responsible for receiving and deciding on reconciliation requests if the value of the offense is 500,000 DZD or less. The committee consists of:

Local Reconciliation Committee Members:

- Treasury Officer of the Wilaya - Chairperson
- Representative of the Tax Administration - Member
- Representative of Customs - Member
- Representative of the Wilaya Trade Directorate - Member
- Representative of Bank of Algeria - Member

The Treasury Administration in the Wilaya acts as the secretariat for the Local Reconciliation Committee.

National Reconciliation Committee:

According to Article 09 bis of Ordinance 10-03 and Article 04 of Executive Decree No. 11-35, the National Reconciliation Committee handles requests where the value of the offense exceeds 500,000 DZD but is less than or equal to 20 million DZD. The committee is composed of:

- A Representative from the General Directorate of Accounting - At least at the level of Director.
- A Representative from the General Inspectorate of Finance - At least at the level of Director.
- A Representative from the Directorate of Economic Control and Fraud Prevention - At least at the level of Director.
- A Representative from the Bank of Algeria - At least at the level of Director.

The management of the committee is overseen by the Judicial Treasury Agency

Directorate. (Saqr, N., 2012)

4 - Effects of Reconciliation in Foreign Exchange Offenses:

Article 09 bis of Ordinance 10-03 explicitly states that reconciliation terminates legal proceedings. This means that public prosecution ends once the offender fulfills all obligations, including paying the reconciliation amount and relinquishing the object of the offense and the means used for fraud to the public treasury. (Kour, 2014)

Generally, foreign exchange crimes align with customs offenses regarding the determination of settlement fees. The legislator has not specified these fees in the law but has delegated this to regulations, allowing the administration some discretion in setting them, with only minimum and maximum limits defined. Reconciliation effects are restricted to the individual who reconciles with the administration and do not extend to other parties or accomplices involved in the same offense. Reconciliation with one defendant does not prevent prosecution of other individuals who contributed to or participated in the offense. (Nadia)

Section Two: Criminal Reconciliation in Tax and Economic Offenses

Firstly: Criminal Settlement in Tax Crimes

Studying criminal settlement in tax crimes necessitates defining taxes and exploring their various forms, as taxes are not a single entity but come in multiple and different types. Definitions of taxes have varied due to the diverse approaches of researchers and their differing financial, legal, economic, and social perspectives

1. Definition of Tax:

A tax is a monetary obligation borne by taxpayers as a final liability without compensation, serving as a financial tool employed by the state to achieve its objectives in accordance with its biological requirements. (Barakat, 1986)

It is also defined as "a financial deduction enforced by the state from the wealth of other individuals without specific compensation for its purpose, aimed at serving the public interest." (Al-Mahjoub, 1971)

2. Objectives of Taxation

Taxes are considered to have social, economic, and political objectives in addition to their traditional financial goal. These objectives can be summarized as follows:

2.1- Financial Objectives

The financial objective is one of the primary goals of taxation, aiming to secure a stable source of revenue for the state. Taxes are considered an internal source of financing for the public treasury. To achieve this, it is essential for the state to broaden the tax base to include a larger number of taxpayers, whether individuals or entities. This expansion is closely linked to the economic development level of the country. (Bouzeida, 2007)

2.2- Social Objectives

Taxes have been used as a significant tool to achieve social objectives, including:

- Preventing the accumulation of wealth.
- Standardizing family policies within the state.
- Addressing housing crises.
- Tackling certain negative social phenomena. (Ali, 2006)

2.3 - Monetary and Political Objectives:

Taxes are used as a means to control the expansion of the money supply relative to the volume of goods, preserving the value of money. Developing countries often face this issue due to their weak production systems and difficulties in achieving a relative balance between supply and demand.

Taxes also serve several political objectives, including:

- Imposing tariffs to protect domestic goods from competition.
- Addressing trade wars between countries, especially among developed nations.
- Targeting certain segments of society, particularly the wealthy.
- Providing financial assistance to specific groups through exemptions.
- Creating regional balance and promoting the localization of industries.
- Granting tax incentives for investments. (Fried & Kamal Rziq, 2007)

3. Characteristics of Taxation

-Taxes are directly deducted from monetary and financial income with the aim of achieving tax equity among individuals based on their financial capacity, rather than the benefits they may derive from public expenditure. This approach is taken due to the difficulty in assessing the specific benefits owed from public utility.

-The complete compulsory nature of taxes means that taxpayers are obligatorily subject to the taxes determined by the state in tax legislation, which specifies methods of collection and assessment procedures

-This financial deduction is non-recoverable and without compensation, meaning that taxpayers pay the tax and cannot request any specific service or benefit from the state in return for their tax payment

-The goal of tax collection is to achieve public benefit, aiming for the supremacy of public utility in a way that allows individuals to benefit from it without discrimination, such as through public services and infrastructure. (Mahrazi,)

It is observed that the Algerian legislator has overlooked one of the most important areas, which is taxation, as various tax laws do not specify reconciliation as a reason for the termination of criminal proceedings. The legislation only refers to indirect tax laws, which is the only law that mentions reconciliation, limiting its effect to fiscal penalties in Article 505. (Bousquias, 2014)

4. Concept of the Reconciliation Committee

According to Article 102 of the Registration Law, as amended and supplemented by Article 40 of the 1991 Finance Law, the Reconciliation Committee is established. It is notable that this committee has an administrative nature despite the presence of a notary. The role of this committee is to attempt to reconcile the interests of both the public treasury and the taxpayer in the realm of registration rights, aiming to find a solution to resolve disputes between the two parties. Resorting to the Reconciliation Committee is a mandatory procedure, as the taxpayer cannot appeal to the provincial tax

director to contest the imposed fees but can only approach the Reconciliation Committee

5. Composition of the Reconciliation Committee

The Reconciliation Committee established at the level of tax directorates in the provinces consists of:

- The provincial tax director as the Chair.
- The registration inspector.
- An inspector from the Directorate of State Property Affairs.
- The regional tax collector.
- A notary appointed by the president of the regional notaries' chamber concerned.
- A representative from the provincial administration.

An inspector from the tax control directorate within the province, responsible for reassessing registration balances, attends the sessions in an advisory capacity to execute the committee's assigned tasks. (Lazank, 2010-2011)

In Article 78 of Law No. 11-16 dated December 28, 2011 which encompasses the 2012 Finance Law, it is stated that the provincial tax director has the authority to delegate any or all of their decision-making powers, including the acceptance or rejection of complaints, to officials who hold at least the rank of senior inspector

Delegation is used to exercise decision-making authority in resolving matters involving a maximum amount of 2,000,000 Algerian dinars (DZD). The head of the tax center and the head of the local tax center each have the same authority to resolve cases where the total amount of fees and fines does not exceed 1,500,000 DZD and 1,000,000 DZD, respectively.

Thus, it can be concluded that the settlement procedure is considered one of the reconciliation measures outlined by the Algerian legislator. The Algerian legislator introduced a specific law for tax procedures, known as the Tax Procedures Law, which aimed to unify the previously scattered procedural texts across different laws. Since the introduction of this new procedural law, the legislator has worked to integrate these provisions into all subsequent financial laws. As a result, a significant portion of the scattered procedural materials across tax laws, including those related to tax disputes, has been unified. (Shahin, 2015-2016)

Secondly: Criminal Settlement in Competition and Pricing Crimes

The Algerian legislator did not limit themselves to resolving economic crimes but also established provisions for another type of crime related to commercial matters

1. Concept of Settlement in Commercial Matters:

Settlement in commercial matters refers to an amicable resolution between the administration responsible for monitoring commercial practices and combating fraud, on the one hand, and the economic operator, on the other. It is a fast, effective, and fair means of resolving disputes without resorting to the judiciary. (Ministry of Trade Website, 2022)

In commercial matters, settlement is primarily applied through reconciliation fines as stipulated by Law 04-02, which outlines the rules applicable to commercial practices, as well as the reconciliation fines established by Law 09-03 related to consumer protection and fraud prevention. Additionally, reconciliation fines are also provided for under Law 18-05 concerning electronic commerce. (Iqab, 2019).

2. Settlement in Commercial Practices Law:

The principle of freedom of industry and trade inevitably leads to adherence to the principle of free competition in the market, which necessitates opening opportunities for private initiative in economic activities. The Commercial Practices Law establishes transparency as a guiding principle for commercial practices by regulating and organizing relationships between economic agents and between them and consumers. This is achieved by providing a favorable environment for commercial transactions, which must be characterized by clarity and integrity. To reinforce the transparency of commercial practices, the legislator has imposed several obligations on economic agents.

The first obligation is to provide information regarding prices and pricing methods. The invoice serves as a second means to ensure proper commercial practices by protecting economic agents and informing consumers of all collections, fees, and expenses paid or due.

Violations by economic agents of the aforementioned obligations may lead to judicial follow-up if discovered by the competent authorities, due to the severity of such practices that hinder free trade and industry. However, the Algerian legislator has allowed economic agents in certain cases to pursue an amicable resolution to avoid judicial proceedings through the mechanism of reconciliation fines in commercial practices offenses. This is based on Article 60 of Law No. 04-02 dated June 23, 06, 2004 which defines the rules applicable to commercial practices and has been amended and supplemented. (Jgham & Sana Mnguez, 2017)

3. Penal Settlement in Violations Affecting Commercial Rules

The amicable route for resolving disputes arising from violations of commercial rules is one of the significant provisions introduced by Law No. 04-02 concerning the rules applicable to commercial practices. This route is considered exceptional and is subject to specific and restrictive conditions in the law due to its impact on criminal proceedings

3.1 Objective Conditions

Article 60 requires the fulfillment of the following objective and procedural conditions. The objective conditions include:

A. Regarding the Offender:

Settlement requires the fulfillment of two conditions:

-The offender must not be a repeat offender:

As specified in Article 47-2 of the law, an offender cannot benefit from settlement if they are a repeat offender. In such cases, the report is directly sent by the provincial trade director to the competent public prosecutor to initiate legal proceedings (Article 62).

Qualified Individuals : The Minister of Commerce is authorized to grant reconciliation if the recorded violation involves a fine exceeding 1,000,000 Algerian dinars (DZD) but less than 3,000,000 DZD. It is noteworthy that there are specific cases under the law where this condition applies, such as when the penalty for non-invoicing, as per Article 33, amounts to 1,000,000 DZD. Additionally, reconciliation is permitted in cases where the fine for violations of illegal commercial practices, as specified in Article 35, ranges from 100,000 DZD to 3,000,000 DZD. If the fine for the recorded violation exceeds 3,000,000 DZD, the reports are sent directly by the provincial trade

director to the competent public prosecutor for legal proceedings. (Massouma, 2010-2011)

3.2. Procedural Conditions:

The procedural conditions include:

A- Proposal for Reconciliation:

It can be understood from the provisions of Article 61 that the initiative for reconciliation comes from the competent administrative authority through the qualified officials who prepared the report. These officials propose a reconciliation fine to the offenders within the limits of financial penalties stipulated by the law. Furthermore, Article 60 indicates that the administration is not obligated to propose reconciliation and is not required to accept a reconciliation offer made by the offender if they wish to pursue it.

B- Response of the Offender:

The offender has three options: either to accept the offer, accept it with reservations about the proposed amount, or reject the offer. All these options are submitted to the competent authority responsible for granting reconciliation. It is worth noting that Article 61 allows the offending economic agents to appeal the proposed reconciliation fine to the provincial trade director or the Minister of Commerce, with the appeal period set at eight days from the date the report is delivered to the offender.

Furthermore, Article 61 also permits, in its third paragraph, the Minister of Commerce and the provincial trade director to adjust the proposed reconciliation fine amount suggested by the qualified officials who prepared the report, within the limits of the financial penalties prescribed by the law.

C- Decision of the Competent Authority:

The decision of the competent authority can either approve the reconciliation, in which case the individuals involved benefit from a 20% reduction in the calculated fine amount. If the fine is not paid within forty-five (45) days from the date of reconciliation approval, the file is referred to the competent public prosecutor to initiate legal proceedings.

As for its effects, reconciliation terminates the legal proceedings according to Article 61-4.

Third: Criminal Reconciliation in Consumer Protection:

According to Law No. 09-03 dated February 25, 2009, concerning consumer protection and fraud prevention, Article 3, Paragraph 1 defines a consumer as:

Any natural or legal person who, for a fee or free of charge, acquires a good or service intended for final use to satisfy personal needs or the needs of another person or an animal under their care.

After defining the consumer, we will now address the procedures required to benefit from reconciliation in the field of consumer protection and fraud prevention. These violations are eligible for reconciliation due to the penalties previously prescribed, ranging from 20,000 DZD to 200,000 DZD

1-Criminal Reconciliation in Consumer Protection and Fraud Prevention:

The Algerian legislator has taken significant steps to protect consumers from unlawful commercial practices that do not comply with legal standards in product manufacturing and marketing. Such practices can expose consumers to serious risks and

harms in some cases, potentially undermining their legally protected needs in the consumption process. To enhance consumer protection against any form of unlawful practice, the legislator introduced the reconciliation fine mechanism to safeguard consumers from the violations of those involved in offering goods for consumption. (Dkhir, 2019)

2-Criminal Reconciliation in Consumer Protection and Fraud Prevention:

The Algerian legislator has focused on protecting consumers from unlawful commercial practices that do not meet legal standards in product manufacturing and marketing. Such practices can expose consumers to serious risks and harms, potentially undermining their legally protected needs in the consumption process. To enhance consumer protection against any form of unlawful practice, the legislator introduced the reconciliation fine mechanism. This mechanism aims to shield consumers from violations committed by those involved in offering goods intended for consumption. (Dkhir, 2019)

3 -Scope of Imposing Reconciliation Fines in the Consumer Protection and Fraud Prevention Law:

Chapter Five of the amended and supplemented Consumer Protection and Fraud Prevention Law includes provisions related to the imposition of reconciliation fines. Specifically:

- Article 88 details the cases to which reconciliation fines apply.
- Article 87 outlines the exceptions to the application of reconciliation fines.

These articles set the framework for when and how reconciliation fines can be applied, as well as the circumstances under which they may not be applicable

- Scope of Application of Reconciliation Fines in the Consumer Protection and Fraud Prevention Law

The Algerian legislator has restricted the application of reconciliation fines under the Consumer Protection and Fraud Prevention Law to only eight specific violations, with each violation having a predetermined penalty amount.

4-Cases Where Reconciliation Fines Do Not Apply in the Consumer Protection and Fraud Prevention Law

-When the Recorded Violation Results in Other Penalties: If the violation leads to penalties beyond financial fines, such as compensation for damages to individuals or property.

-In Cases of Multiple Violations: If at least one of the multiple violations is not eligible for reconciliation fines.

-In Cases of Recidivism: If the violation is a repeated offense (Dkhir, 2019).

5 -Procedures for Imposing Reconciliation Fines in the Consumer Protection and Fraud Prevention Law

According to Article 86 of the Algerian law, the authorities responsible for recording violations related to consumer protection and fraud prevention are authorized to impose reconciliation fines in cases of infringement of this law. Article 25 of the law specifies the entities responsible for imposing these fines, including:

- Judicial Police Officers
- Other authorized agents as per the specific regulatory provisions for consumer

protection and fraud prevention.

These agents are also qualified to investigate and observe the violations stipulated by Law No. 09-03 on consumer protection and fraud prevention. (Naïmi, 2015)

6-Effects of Reconciliation Fines in the Consumer Protection and Fraud Prevention Law

Under Article 93 of Law No. 09-03 related to consumer protection and fraud prevention, the Algerian legislator established that the criminal prosecution is considered terminated if the offender pays the reconciliation fine within the specified legal deadlines and conditions.

Fourthly :Reconciliation Fines in E-Commerce Law:

E-commerce is one of the most significant developments resulting from global transformations since the 1990s across various fields. Transactions are now conducted through electronic means, making e-commerce a modern method of sale that transcends traditional contracts. The technological advancements achieved in recent years have made the world feel like a small village (Qashi, 2023). Consequently, e-commerce has become a fundamental pillar of the new global economic system and a crucial mechanism supporting the globalization of commercial and production ventures.

Reconciliation Fines in E-Commerce Law :In response to global transformations, the Algerian legislator issued a new specific law, No. 18-05, on May 10, 2018, concerning foreign trade. This law establishes the general rules for e-commerce related to goods and services. It is considered a new framework that is still in its early stages, aimed at effective market regulation due to the disruptions experienced because of the novelty of the topic in Algerian society. The law also aims to define the obligations and rights of both parties involved in e-commerce contracts (El-Fattah, 2015).

The E-Commerce Law outlines actions considered violations and specifies their penalties. If an electronic supplier commits one of these violations, authorized agents are required to either send the report to the competent judicial authority or propose a reconciliation fine to the offenders, as stipulated in Article 45 of the E-Commerce Law. This provision allows for the resolution of disputes and termination of judicial proceedings if the proposed fine is paid (Kaddam & Wasila Bouhya, 2020).

Chapter Three: Criminal Reconciliation in Personal Offenses

In addition to the general characteristics shared by all forms of criminal reconciliation, such as being non-judicial procedures characterized by speed and brevity, criminal reconciliation also has a consensual and voluntary nature. This distinguishes it from other traditional criminal procedures. (Nada, 2008)

First: Reconciliation in Personal Offenses: The Relationship Between the Accused and the Victim

Most legislations that allow criminal reconciliation in personal offenses aim to keep the reconciliation process free from state intervention. This is due to the unique nature of these crimes, which primarily affect the personal rights of the victim without having a significant impact on society at large. As a result, the public prosecution, representing the community, does not have the authority to reconcile with the accused in such cases, even if it deems it appropriate.

This contrasts with reconciliation in regulatory, financial, or economic crimes, where the state, represented by its public authorities, plays a central role in the reconciliation process. In such cases, state agencies have substantial control over the criminal reconciliation process. However, reconciliation in personal offenses should be

a private matter between the accused and the victim. Thus, criminal reconciliation in personal offenses can occur directly between the parties involved, leading to the resolution of the criminal case between them. (Al-Qahouji, 2003)

1- Criminal Reconciliation in Crimes Against Individuals According to Algerian Legislation

The Algerian legislator introduced a new system for criminal reconciliation between individuals through Law No. 06-23, dated December 20, 2006 which amends and supplements Ordinance No. 66 -156, dated June 8, 1966 containing the Penal Code. This system aims to shorten the duration of lengthy court proceedings that may last for years by allowing the victim to be involved in the process. Specifically, for crimes outlined by the law, the fate of the public prosecution depends on the victim's will rather than the public prosecutor, as is generally the case.

The Algerian legislator views the crimes for which the victim may pardon the defendant as not representing a serious threat to the public interest. If the victim agrees to reconciliation, the public prosecution is terminated. Thus, the Algerian legislator grants the victim a prominent role in ending the public prosecution for certain crimes, especially those that involve individuals and are considered minor or moderately serious, which occur in the context of social relationships. We will briefly discuss these crimes according to Algerian legislation. (Khalfa, 2016).

1.1 - Crimes Against Honor and Reputation:

The Algerian legislator has included the system of victim pardon within the section of the Penal Code that addresses offenses against individuals' honor and reputation, their private lives, and the disclosure of secrets. This is specifically applied to the crimes of defamation and insult, which leads to the termination of the public prosecution

1.2 - Crimes Committed Against the Family:

The family is considered the fundamental unit for building and developing society. The Algerian legislator has aimed to enact legislation and laws to protect the family and preserve it, as well as to safeguard minor children who have not reached the age of criminal or civil majority. The legislator explicitly punishes any actions that undermine the family system and threaten its stability, security, and preservation. Despite the clear penal provisions, the legislator has allowed for the pardon of certain crimes that affect the family, or has conditioned the initiation of public prosecution on a complaint from the victim. This grants the victim the right to decide whether to pursue legal proceedings or not. This approach gives the victim a degree of control and the ability to make decisions based on their desires and personal circumstances. Examples of such crimes include the crime of not delivering a minor, abandonment of a pregnant wife, refusal to pay alimony, and adultery. (Marah, 2016)

2- Crimes Against Physical Integrity in Which Reconciliation is Permissible

The right to physical integrity is a fundamental right that is protected by both religious and legal standards, preventing any infringement or diminishment of it. This right encompasses the integrity of the body's structure, functions of its organs, and systems. The Algerian legislator has criminalized acts that violate physical integrity and specified penalties for bodily harm in Articles 264-267 of the Penal Code, covering assaults on individuals, regardless of gender or means used. The Algerian legislator punishes infringements on physical integrity in three main forms: assault, injury, and abuse, as they affect an individual's right to physical safety. Physical integrity can be

defined as the individual's and society's interest in the normal functioning of vital bodily functions and the preservation of the person's physical wholeness, free from physical pain. These assaults may be intentional or unintentional, and the Algerian legislator has provided for the possibility of reconciliation in such cases. (Mehnawi, 2020)

Physical integrity is a fundamental right that is protected by both religious and legal standards, prohibiting any form of infringement or reduction. This right encompasses the protection of the body's structural integrity, the proper functioning of its organs and systems, and freedom from various forms of pain. The Algerian legislator has criminalized actions that harm physical integrity, as these actions impact the human body, its functions, or lead to different kinds of pain. Articles 264-267 of the Penal Code address physical assaults against individuals, regardless of gender or means used. The Algerian legislator punishes violations of physical integrity in three primary forms: assault, injury, and abuse, as these affect an individual's right to physical safety. Physical integrity can be defined as the individual's and society's interest in the normal functioning of vital bodily functions and the preservation of physical wholeness, free from pain. These violations may be intentional or unintentional, and the Algerian legislator has permitted the possibility of reconciliation in such cases. (Mehnawi, 2020)

2.1 - Intentional Assault on Physical Integrity Where Reconciliation is Permissible

The Algerian legislator allows for reconciliation in cases of intentional assault on physical integrity, provided that there is no prior intent, premeditation, or use of a weapon. These conditions are considered aggravating factors and indicate criminal seriousness.

Reconciliation is permissible in cases involving physical harm as long as there is no premeditation, stalking, or weapon use, as these are considered aggravating circumstances. Such factors reflect a strong intent to commit the crime or pre-planning. Consequently, the presence of these conditions may warrant more severe penalties proportional to the seriousness and gravity of the offense, reflecting the criminal seriousness involved.

2.2-Unintentional Assault on Physical Integrity Where Reconciliation is Permissible

The Algerian legislator permits reconciliation in cases of unintentional injury, or negligence, including wounds, injuries, or illnesses, provided that these are not deliberate but result from carelessness, lack of caution, inattention, neglect, or failure to observe regulations.

Article 442, paragraph 2 of the Algerian Penal Code states: "Anyone who, without intent, causes wounds, injury, or illness that does not result in total disability for more than 3 months." If the injury is unintentional and caused by the mentioned factors, reconciliation with the offender is permissible.

Second: Criminal Reconciliation in Traffic Offenses

Article 392, paragraph 1 of the Algerian Code of Criminal Procedure permits amicable settlement of traffic violations through the payment of a fixed fine. Law No. 01/14, dated August 19, 2008 as amended and supplemented by Ordinance No. 09-03 dated July 22, 2009 concerning the regulation, safety, and security of road traffic, specifically Article 118, provides the following:

Any person who violates the provisions related to traffic safety and is subject to a fine not exceeding 5,000 DZD may pay a fixed fine within 15 days of the violation being noted." This indicates that the fixed fine system applies to all traffic violations.

Exceptions to this system are specified in Articles 74 and 82 of the Traffic Law, which concern: exceeding the legal speed limit and performing work on a public road without proper repair. Article 120 of the Traffic Law specifies the amount of the fixed fine as follows:

- 200 DZD for violations subject to a fine not exceeding 300 DZD.
- 300 DZD for violations subject to a fine not exceeding 800 DZD.
- 800 DZD for violations subject to a fine not exceeding 1,500 DZD.
- 1,500 DZD for violations subject to a fine not exceeding 5,000 DZD.

(Bouskiaa, "Reconciliation in Penal Matters in General and in Customs Law in Particular," 2013)

When the offender agrees to the settlement offer, they must affix a stamp indicating the value of the fixed fine specified for them on the notice of violation in the designated area. They are also required to complete the necessary details on the notice and send it to the authority that observed the violation within 30 days from the date of observation. If payment is not made within this period, the violation report will be forwarded to the competent public prosecutor to initiate public prosecution, and the fine will be increased to its maximum amount as specified in Article 120 of the Traffic Law.

The Algerian legislator has adopted a reconciliation system for regulatory offenses in a very limited manner, if not almost nonexistent, compared to other legislations such as Egyptian and French laws. In Algeria, reconciliation takes two forms: the settlement fine specified in Article 381 of the Algerian Code of Criminal Procedure, which pertains to minor public law offenses, and the fixed fine outlined in Article 392 of the Algerian Code of Criminal Procedure, which pertains to traffic law violations. (Dreisi, 2019)

Conclusion:

Through our study of the topic of criminal reconciliation as an important and effective mechanism within the newly established legal system, we conclude that it represents a comprehensive system for managing criminal proceedings and is an integral part of criminal justice. It is characterized by its diversity, flexibility, and speed of procedures, offering the parties involved an opportunity to resolve disputes amicably outside the courtrooms. This contributes to reducing the burden on the judicial system, saving time and money, and alleviating the strain on the judiciary, which often faces lengthy and complex traditional legal processes that fail to meet current needs. (Radia, 2018)

Moreover, it achieves a higher goal: strengthening human relationships between the reconciling parties, fostering social peace, and mending interpersonal relations. This is often not achieved through traditional litigation processes. Additionally, it enhances the chances of rehabilitating offenders and integrating them into society, away from the stigma of traditional criminal penalties

In light of this study, we can propose several recommendations that could contribute to the success of the criminal reconciliation method and achieve its intended goals

These recommendations are as follows:

- 1 -The Algerian legislator is criticized for having confined the application of the criminal reconciliation system to a very narrow scope, limiting its use to certain economic crimes such as currency offenses, customs crimes, competition and pricing offenses, and some regulatory violations.

2 -Victim satisfaction with the outcomes should be ensured, and they should be protected from any pressures that might affect their decisions regarding reconciliation.

3 -Legislative and procedural frameworks should be developed to facilitate the application of criminal reconciliation and enhance public awareness of its importance and role in achieving sustainable justice.

4 -The scope of the criminal reconciliation system should be expanded to include some less severe criminal offenses as well.

5 -Precise controls and standards should be established to prevent the misuse of this mechanism and ensure justice for all parties involved.

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