

MEDIATION AS AN ALTERNATIVE MECHANISM TO CRIMINAL PROSECUTION OF JUVENILE OFFENDERS



Dr. Samira ZOUBA^{1*}

Faculty of Law, University of Boumerdes, (Algeria)

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Abstract: The Algerian legislator has aligned with modern trends in criminal justice by embracing the principle of restorative justice for resolving disputes, particularly concerning juveniles. This alignment led to the incorporation of mediation mechanisms through the amendment of the Criminal Procedure Code and the enactment of Child Protection Act No.15-12, reflecting the positive outcomes seen in other nations that have implemented similar measures. The use of judicial mediation as an alternative to criminal prosecution of juvenile delinquents represents a significant application of consensual justice, enhancing individual involvement in the criminal justice system. This approach not only ensures victim compensation but also fosters the societal reintegration of juvenile offenders by facilitating behavioral correction. A crucial benefit of this method is its contribution to community preservation.

Key Words: Mediation; Characteristics; Objectives; Conditions; Effects.

الوساطة كآلية بديلة للمتابعة الجنائية للأحداث الجانحين

المخلص: لقد سائر المشرع الجزائري التطورات الحاصلة في مجال العدالة الجنائية متبنيا مبدأ العدالة التصالحية في حل النزاعات، خاصة عندما يكون الأمر متعلقا بالأحداث. تم تطوير آلية التوفيق ضمن تعديلات قانون الإجراءات الجزائية وقانون حماية الطفل رقم 12-15، استجابة للإنجازات الملموسة التي شهدتها الدول التي طبقت هذه الآلية، فإدماج الوساطة لمتابعة الأحداث الجانحين يمثل واحداً من أهم التطبيقات لمبادئ العدالة التوافقية، و تفعل مشاركة الأفراد في نظام العدالة الجنائية، فهي تضمن تعويض المجني عليه من جهة، و تعمل على إعطاء فرصة للطفل الجانح ليندمج في المجتمع بتصحيح سلوكه من جهة أخرى. و كنتيجة هامة الحفاظ على المجتمع.

الكلمات المفتاحية: الوساطة، خصائص، أهداف، شروط، آثار.

* Dr. Samira ZOUBA: s.zouba@univ-boumerdes.dz



Introduction:

One of the notable contemporary legal phenomena is the shift towards alternative dispute resolution methods to circumvent the complexities and formalities associated with traditional litigation and the ensuing repercussions. This shift has led to the adoption of mediation across various legal disciplines, including civil, administrative, and criminal law. Mediation emerged in the legal frameworks of Anglo-Saxon jurisdictions during the 1970s, initially in Canada and the United States, before proliferating throughout most European countries.

The global criminal policy framework has increasingly begun to integrate this approach, as demonstrated by its positive reception at international forums. The United Nations, through its conferences, has consistently advocated for countries to adopt a reconciliatory approach as a viable alternative to conventional criminal procedures aimed at punishing the offender¹.

The management of juvenile delinquency through criminal treatment seeks to rehabilitate, rectify, and reintegrate offenders into society, promoting their involvement in a constructive social environment. It is imperative that juveniles be subject to specialized mediation regulations distinct from those applicable to adults, recognizing that juvenile offenders often result more from adverse circumstances than inherent criminal propensity.

These circumstances may include challenging social environments, health issues, or psychological disorders, a combination of factors that traditional punitive measures fail to address effectively². Indeed, it has been scientifically proven that violence and coercive tactics not only fail to correct juvenile delinquency but may exacerbate it.

¹This includes the 1987 Recommendation, which underscores the importance of regulating mediation among the parties involved in public litigation, and the 1989 Recommendation, which advocates for the enhancement of public litigation management through innovative procedures, such as mediation and reconciliation between disputing parties. Furthermore, the Vienna Conference of 2000 set a deadline for the adoption of national, regional, and international action plans aimed at supporting crime victims by the year 2000, incorporating mechanisms for mediation and restorative justice.

العابد العمراني الملودي، الوساطة الجنائية: التشريع الفرنسي والتونسي كنموذجين، على الموقع www.droitentreprise.org

²In addition to the juvenile justice systems in the United States, England, France, and other European countries, a recent trend has emerged in the Scandinavian nations, such as Sweden, Denmark, and Norway, involving the removal of judicial jurisdiction over juvenile offenders and those at risk of offending from the judiciary. This responsibility has been delegated to specialized administrative bodies comprising social workers, psychologists, educators, and others concerned with youth issues.

زينب أحمد عوين، عدالة الأحداث: دراسة مقارنة، دار العلم الدولية للنشر والتوزيع، عمان، 2003، ص ص. 54-56



Consequently, criminal policy has been evolving towards eschewing traditional penalties, as reflected in Algeria's Child Act No.15-12³. The legislator has adopted mediation as an alternative solution for dealing with juvenile delinquents, positioning it as a new system aimed at their correction, rehabilitation, and reintegration into society, without resorting to punitive measures. This is achieved through reconciliation between the offender and the victim, fostering a spirit of conciliation, and granting them a central role in resolving the criminal dispute, thus achieving what is known as restorative justice. Consequently, a key issue arises regarding the effectiveness of criminal mediation as a mechanism for both protecting the juvenile offender on one hand, and safeguarding the rights of the victim on the other.

To address the issue at hand, this study employs a descriptive methodology, as it aligns with the definitions, characteristics, and objectives of the subject matter. Additionally, an analytical approach has been adopted to examine the various legal texts that address the topic. The study is divided into two main sections. The first section examines the concept of mediation, while the second section is dedicated to exploring the conditions for mediation and the legal consequences resulting therefrom.

THE FIRST TOPIC:

The concept of mediation

Within criminal policy, mediation stands out as a significant component of modern criminal justice strategies, effectively transforming several established norms in criminal law. Therefore, it is essential to understand what the mediation means and its characteristics—first requirement—and its objectives—second requirement.

First requirement: Definition of mediation and its characteristics:

Criminal mediation is a consensual means of resolving criminal disputes based on the concept of negotiation among the parties involved. It is a system newly introduced in most criminal procedural legislations; it is therefore necessary to define what is meant by it—firstly—and it is also characterized by certain features—secondly.

³القانون رقم 15-12 المتعلق بحماية الطفل، مؤرخ في 28 رمضان عام 1436 الموافق 15 يوليو سنة 2015، الجريدة الرسمية رقم 39



First section: Definition of mediation:

Within the scope of legal definitions, criminal mediation is recognized as a mechanism to settle disputes with criminal elements through negotiation between the perpetrator and the victim concerning the effects of the crime. Thus, criminal mediation is a procedural approach in criminal law that hinges on mutual agreement to address criminal conflicts.

The legislation underscores the necessity of securing consent from both the perpetrator and the victim within the criminal justice framework. The Algerian legislator describes this in Article 2(6) of Act No. 15-12 as “ A legal mechanism aimed at concluding an agreement between the juvenile offender and their legal representative on one side, and the victim or their legal heirs on the other side.”

The mediation process is essentially an agreement between three parties: the juvenile offender and their legal representative, the victim or their legal heirs. The mediator's role is performed by the public prosecutor or delegated to one of their assistants or a judicial police officer.

By referring to the Code of Criminal Procedure as amended in 2015, specifically Article 37 bis and the following articles, it becomes clear that the law does not provide a definition for criminal mediation, limiting itself to procedural provisions and leaving the task of defining it to legal doctrine.

There have been multiple doctrinal definitions of criminal mediation. Some define it as “a process fundamentally based on the consent of the disputing parties, with the involvement of a neutral third party, and this takes place before the public prosecutor acts on the criminal case or a judgment is rendered.” It has also been defined as “an effort by a mediator to facilitate a settlement between the disputing parties, aiming to reach an agreement acceptable to them. This requires the mediator to present proposals and recommendations that are acceptable to the disputing parties.”⁴

Second section - Characteristics of mediation:

Mediation, both generally and specifically in the criminal context, possesses several attributes that render it superior to traditional methods of dispute resolution. These can be summarized as follows:

⁴ Article 37 bis of Order No. 15-02, dated July 23, 2015, amending and supplementing Order No. 66-155 of June 8, 1966, which encompasses the Code of Criminal Procedure, stipulates: “The Public Prosecutor may, prior to any criminal prosecution, initiate mediation either on his own accord or at the request of the victim or the accused, when such mediation is likely to remedy the harm resulting from the crime or to compensate for the damages incurred.” For more details see:

قوفي يوسف، الوساطة الجزائية كآلية لحماية الطفل و إعادة ادماجه في الوسط الاجتماعي، مجلة دراسات و أبحاث، العدد 2017، 29، ص 365



1. Reducing the Burden on the Judiciary:

As a dispute resolution mechanism, mediation helps to ease the workload on the judiciary. Moreover, mediation offers a conclusive resolution to disputes, thereby inevitably decreasing the number of cases brought before the judiciary.

2. Flexibility:

A distinctive feature of mediation is the procedural flexibility it offers. This flexibility is highlighted by the autonomy allowed to the parties involved to select or pursue a course they consider suitable for achieving a harmonious resolution, in contrast to the often lengthy processes of judicial disputes.

The Algerian legislator has not specified a duration for criminal mediation but required its use before any criminal proceedings, according to Article 110 of the Child Protection Act No. 15-12.

3. Confidentiality:

Confidentiality is a crucial aspect of the mediation framework, as public knowledge of the disputes, along with their root causes and motivations, could negatively impact the parties' standings.

This confidentiality extends to all facets and procedures within the mediation. Given that mediation takes place in the private office of the public prosecutor and is carried out in strict privacy with only the relevant parties and the public prosecutor present, or a lawyer if one has been engaged, this secrecy fosters an environment conducive to frank discussions and unrestricted expression of opinions by the parties.

4. Continuation of Amicable Relations Between the Parties:

Mediation operates on the foundational principle of mutual consent among the parties, seeking restorative justice through dialogue and negotiation between the disputants. At its core, mediation strives to discover a solution that is both agreeable and voluntarily crafted by the parties involved.

Mediation offers a platform for the parties to convene, share their views, and work towards resolving their disputes, with the goal of achieving an outcome that reconciles their different positions, in contrast to the judicial process which resolves cases by ruling in favor of one party over the other.



Second requirement: Objectives of mediation:

Criminal mediation has become a familiar and widely adopted term in contemporary criminal law, viewed as a means to secure the victim's rights and enhance individual participation in the criminal justice system. Additionally, it serves as a social mechanism to address the repercussions of crime.

First section: Objectives of mediation for the victim:

The purpose of criminal mediation is to compensate the harm suffered by the victim, which may be financial in nature depending on the losses incurred by the victim. The legal representative of the juvenile offender is liable for civil damages caused to third parties, as stipulated in Article 56(2) of the Child Protection Law. The legal representative may include a testator, curator, person in charge of child care and custodian, as defined in Article 2(5) of the Child Protection Law. Compensation for damages can take various forms, such as written or verbal apologies. The assessment of damages is determined through negotiations conducted between the juvenile offender and their legal representative on one side, and the victim or their legal heirs on the other.

Second section: Objectives of mediation for the juvenile:

Childhood represents the initial stage of life and the foundation for personal development and moral elevation. It is a critical and essential phase for shaping and evaluating the individual, during which the child is prepared and equipped to approach future stages of life with enhanced awareness, greater maturity, and clearer understanding. It is an undisputed fact that the status of children differs from that of other societal groups, as children do not pose an intellectual or security threat to the state.⁵

However, juvenile delinquency signifies a societal loss of valuable human resources essential for future development, as juveniles are the leaders of tomorrow and the productive force responsible for driving progress and prosperity. If their potential is stifled, society is condemned to stagnation, regression, and ignorance. Therefore, any effort aimed at addressing their needs and ensuring their protection simultaneously safeguards the nation's future and reinforces its stability and security.

⁵ Criminal policy researchers first employed this term as articulated by the German jurist Ludwig Feuerbach, who utilized it in his work on criminal law published in 1803. At that time, the term referred to a set of punitive measures that the state adopts in response to crime, specifically the actions taken within a particular country and at a specific time aimed at combating crime therein. براء منذر عبد اللطيف، السياسة الجنائية في قانون رعاية الأحداث: دراسة مقارنة، الطبعة الأولى، دار الحامد للنشر والتوزيع، عمان، 2009، ص 7.



Most contemporary legislations regard the juvenile offender as a victim; consequently, it is essential to protect and rehabilitate them rather than impose punitive measures that complicate the situation further. Although these measures may vary in their forms and applications, they align in their fundamental objective of treatment and reform, rather than punishment. The rehabilitative measure differs from punitive action in its aim; while punishment seeks to achieve general deterrence, the rehabilitative measure is focused on the correction and rehabilitation of the juvenile. Although punishment may also include elements of reform and rehabilitation, its primary objective remains to inflict suffering on the offender.⁶

The Algerian legislator has imposed the requirement for the reintegration of the juvenile offender within the framework of criminal mediation policy. This provision is designed to instill a sense of accountability in the minor and to make them acutely aware of the gravity of the harmful act that resulted in the crime. Failure to comply with the obligations derived from the mediation negotiations triggers the re-initiation of public prosecution and may lead to the imposition of criminal sanctions.

In accordance with Article 114 of Law No. 15-12, the mediation record may stipulate the child's commitment—under the supervision of their legal guardian—to fulfill one or more of the following obligations within the agreed-upon period: submission to medical supervision or treatment, continuation of education or specialized vocational training, and avoidance of contact with any individual who may facilitate the child's return to criminal behavior. The public prosecutor is charged with the duty of ensuring that the child adheres to these obligations, acting in the best interest of justice and the rule of law.

Third section: Objectives of mediation for society:

Criminal mediation, as an alternative means of resolving criminal disputes, has been established to achieve multiple and varied goals, foremost among which is the transformation of the concept of justice from traditional punitive or retaliatory justice to compensatory or conciliatory corrective justice.

Criminal mediation is designed to restore relationships among individuals involved in a crime by orchestrating encounters between the perpetrator and the victim. This enables both parties to articulate the impact of the crime and devise strategies for remediation, without examining the underlying causes of the criminal behavior. This method significantly bolsters and creates new social ties between the parties, thereby expediting their reintegration into society. As a result, it facilitates the healing of the victim's injuries and reduces the social isolation that the offender may face as a result of legal proceedings.

⁶أحمد داود رقية، "ملامح دور الوساطة الجنائية في حماية الطفل الجاني: دراسة مقارنة"، المجلة المتوسطة للقانون والاقتصاد، العدد 2، 2017، ص 47



Criminal mediation has become a prominent feature of modern criminal policy⁷, enabling a shift from some of the general rules prevalent in criminal laws, notably that criminal prosecution is the sole means for the state to exercise its right to punish. Thus, criminal mediation serves the victim, by preventing them from going uncompensated, and the offender, by halting prosecution, especially for minor crimes, and the community through the reconstruction of relationships among individuals⁸.

THE SECOND TOPIC:

Conditions and effects of mediation:

Criminal mediation requires several conditions to be met to employ it as an alternative solution for dealing with juvenile offenders—first requirement—and, depending on whether these conditions are met, various effects may arise, either through its success or failure—second requirement.

First requirement: Conditions of mediation

The fundamental principle of mediation is based on mutual consent; without it, the mediation process cannot advance. However, it is crucial that mediation be applied within the scope of crimes for which the legislator has permitted its use. The public prosecutor's office retains the discretionary authority to implement it, which will be discussed in this subsection.

First section: Existence of a criminal action:

For a system of criminal mediation to be considered, there must be a criminal suit. This is the means through which society holds accountable the perpetrator of a crime that has disturbed its peace and security and endangered its interests.

A criminal case is characterized as the state's right, represented by the public prosecutor, to conduct a series of actions to confirm the occurrence of a crime and its

⁷ حاج علي بدر الدين، "الحماية الجنائية للطفل في القانون الجزائري"، رسالة ماجستير في العلوم الجنائية وعلم الجريمة، جامعة أبو بكر بلقايد، تلمسان، كلية الحقوق، 2009-2010، ص 1.

⁸ Criminal mediation facilitates the repair of harm, accountability, and the reintegration of the offender. Additionally, as Daniel Julien notes, it contributes to "recidivism prevention."

روبرت كاري، "إمكانات وغموض الوساطة"، في وقائع الندوة: الوساطة الجنائية بين القمع والإصلاح، دار لهارماتان للنشر، 1997، ص 14. انظر أيضا: جاك فاجيه، "الإطار القانوني والأخلاقي للوساطة الجنائية"، في وقائع الندوة: الوساطة الجنائية بين القمع والإصلاح، دار لهارماتان للنشر، 1997، ص 59.



association with a perpetrator, and to subsequently prosecute them for the purpose of punishment or preventive measures⁹.

The Algerian legislator has not restricted the application of mediation to any specific type of misdemeanor as it does for adults, according to Article 37bis2 of the Criminal Procedure Code.

This article permits mediation in misdemeanor matters for offense such as insult, defamation, invasion of privacy, threats, slanderous denunciation, abandonment of family, wilful withholding of maintenance, failure to deliver a child, fraudulently taking possession of inheritance funds before their division, joint property or company funds, issuing a check without balance, intentional destruction of another person's property, as well as the offenses of assault and battery, whether negligent or intentional, committed without prior intent or premeditation, or the use of a weapon, along with crimes related to violations of real property rights, agricultural crops, and livestock grazing on another's land, and the fraudulent consumption of food, beverages, or other services, may also be subject to mediation. Additionally, mediation may be applied in cases involving petty offenses. Given that these offenses are of relatively low severity, where remedying the harm caused is easily achievable by the offenders, The legislator has authorized the public prosecutor to conduct mediation in offenses committed by juvenile offenders, in accordance with the provisions of Article 110 of the Child Protection Law.

The Algerian legislator did not specify the scope of misdemeanors eligible for mediation, thereby allowing the public prosecutor to initiate mediation for any misdemeanor a child may commit. However, the law requires the presence of a victim or their legal heirs and the agreement of the juvenile offender's legal representative to bring an end to criminal proceedings. This limitation effectively confines mediation to misdemeanors involving persons and property, excluding offenses against public interests.¹⁰

The discretionary power is vested in the public prosecutor to accept mediation as an alternative to prosecution for petty offenses, as these crimes do not pose a significant threat to society. However, mediation cannot be applied to felonies committed by a juvenile, in accordance with Article 110 of the Child Protection Law.

⁹صباح أحمد نادر، التنظيم القانوني للوساطة الجنائية و إمكانية تطبيقها في القانون العراقي: دراسة مقارنة، وزارة العدل، 2014، ص7.

¹⁰فغور رايح، "الحماية الاجرائية للحدث الجانح من خلال الية الوساطة"، مجلة القانون، المجلد 9، العدد 2020، 1، ص79.



Second section: Suitability in conducting criminal mediation:

The public prosecutor's office plays a crucial role in criminal mediation, as it is responsible for determining whether a dispute is appropriate for mediation by evaluating the conditions suitable for resolving the dispute through this method.

As stated in Article 111 of the Child Protection Law: "The public prosecutor may personally oversee the mediation, or he can assign this task to an assistant or a judicial police officer. Mediation can be initiated either upon the request of the child or their legal guardian or spontaneously by the public prosecutor. Should the public prosecutor opt for mediation, he summons the child and their legal guardian, along with the victim or their legal representatives, to solicit their views."

Criminal mediation is a non-mandatory procedure undertaken by the public prosecutor before initiating public prosecution. It is a discretionary measure that the prosecutor may decide upon either on their own initiative or at the request of the victim or the accused. This approach is reflected in most legal systems, including Algerian law, unlike some comparative jurisdictions, such as Indian and Sri Lankan law, which make mediation a compulsory step before any criminal prosecution.

The Algerian legislator does not require the public prosecutor to justify the refusal of a mediation request made by one or both parties to the dispute. Mediation falls under the discretionary power of the public prosecution, which exercises the principle of prosecutorial discretion. However, this lack of obligation to provide reasoning for refusal may impact the effectiveness of this alternative solution, which the legislator has introduced to promote restorative justice in society.¹¹

When parties consent to mediation, the public prosecutor takes on the mediator's role, carefully considering each party's viewpoint in an effort to mend differences and restore relationships. The mediator's function is to facilitate resolution, not to pass judgment on the matter, thereby helping the parties reconcile and rebuild their relationships.

Consequently, criminal mediation focuses on finding agreeable resolutions without addressing the offender's criminal responsibility. It is imperative for the mediator to keep all disclosed information confidential during the negotiation process and to maintain neutrality, avoiding bias towards any party.

To uphold the judiciary's independence and impartiality, the French legislation explicitly forbids anyone involved in judicial duties from engaging in mediation, as outlined in decree 96-305. This ban includes judges, whether public prosecutors or adjudicating judges, expert lawyers, lawsuit agents, labor court judges, and court

¹¹ جزول صالح، و مبطوش الحاج، مدى فاعلية أحكام الوساطة الجزائية في حل النزاعات في التشريع الجزائري، مجلة الاستاذ الباحث للدراسات القانونية و السياسية، العدد الخامس، 2017، ص 106



clerks, whether in ordinary or administrative courts. In order to preserve independence and impartiality, the French legislator, pursuant to the decree issued in 1996, has specifically prohibited the public prosecutor or his representative from acting as a mediator.¹²

Third section: Parties' acceptance of criminal mediation:

To ensure that interests of both juvenile and victim are considered, establishing a communication link between the juvenile offender, their legal guardian, and the victim has become crucial. This approach broadens the reach of restorative justice and emphasizes the victim's role, allowing for direct interaction that can transform their confrontational relationship into a contractual one¹³.

Once the public prosecutor proposes mediation, either personally or through a delegate like an assistant or a judicial police officer, and the parties consent to it as a means to settle the dispute, this agreement is formally documented in the prosecutor's records. According to Recommendation No. 99-19 by the Council of Europe, it is essential that the parties' agreement to mediate is secured and that their participation in the mediation process is wholly voluntary¹⁴.

Criminal mediation as an alternative to criminal prosecution requires consent, which must come from a person with full legal capacity. In criminal law, capacity is defined as being eighteen years of age and of sound mind. Therefore, the legal representative must be present with the juvenile in any agreement made with the victim or their rights holders.

Second requirement: Effects of mediation:

Criminal mediation results in one of two outcomes: either the mediation is successful or it fails.

First section: In case of successful mediation:

The mediation agreement is recorded and endorsed by the mediator, the court clerk, and all involved parties, with each party receiving a copy of the document. If the mediation is conducted by a judicial police officer, the mediation record must be

¹² Décret du 10 avril 1996 interdisant au procureur ou à son substitut la fonction de médiateur. Voir : CARIO Robert, Potentialités et ambiguïtés de la médiation pénale, HARMATAN, Paris, 1997, P23

¹³ حمو بن إبراهيم، "الحماية الجنائية للطفل في التشريع الجزائري والقانون المقارن"، جامعة محمد خيضر، بسكرة، 2015، ص 376.

¹⁴ صباح أحمد نادر، المرجع نفسه، ص. 159.



submitted to the public prosecutor for endorsement as per Article 112 of the Child Protection Law.

A designated timeframe is allotted to the juvenile to fulfill the commitments outlined in the mediation agreement, while the public prosecutor monitors its implementation (Article 114 of the Child Protection Law). The mediation agreement, which includes compensation for the victim or their rights holders, becomes an enforceable document and is stamped with an execution formula in accordance with civil and administrative procedure law.

According to Article 37bis5 of the Criminal Procedure Code, the mediation record is final and not subject to appeal. If the juvenile offender meets the stipulated obligations, the public lawsuit is dismissed along with all its implications. This dismissal ensures no further claims can be made regarding the same incident, the incident cannot be used as a precedent in future legal actions, and it is not entered into the juvenile offender's criminal history.

Second section - In case of failed mediation:

Should the parties decline mediation, fail to agree, or if the juvenile offender does not meet the specified obligations, the public prosecutor has the option to either dismiss the case or proceed with the prosecution, thus initiating the public lawsuit.¹⁵

Under Article 110 of the Child Protection Law, the mediation process halts the statute of limitations. This pause in the statute of limitations safeguards the victim's rights by securing compensation and prevents the juvenile offender and their legal representative from manipulating delays in the mediation process to their advantage, potentially causing the statute of limitations to lapse.

This halt effectively eliminates any chance for the juvenile and their legal representative to improperly exploit the criminal mediation process. Claiming otherwise would undermine the mediation process's purpose and harm the victim by shortening the period needed to hold the offender and their representative accountable for compensating the incurred damages.

¹⁵ Criminal mediation is regarded as one of the specific grounds for the termination of public prosecution; however, it occurs prior to any action taken by the Public Prosecutor concerning the public case. In contrast, penal reconciliation is also considered a specific ground for the termination of public prosecution, but it can be conducted at any stage of the public proceedings.

دريسي نور الهدى، "الوساطة الجزائية كآلية قضائية لحماية الطفل الجانح في ظل القانون 12-15 المتعلق بحماية الطفل"، المجلة المتوسطة للقانون والاقتصاد، العدد 2، 2017، ص 92



Conclusion:

Mediation provides an alternative method for the public prosecutor's office to manage criminal cases. Traditionally, the choices were limited to either archiving the case or pursuing formal legal proceedings. This approach offers a modern interpretation of traditional justice, enhancing its role in the fight against crime. It is founded on the philosophical premise that misunderstanding between two persons does not signify an inherent inability to communicate, but rather a lack of discussion¹⁶.

In Algeria, criminal mediation represents an innovative legal culture for addressing cases involving juvenile offenders. The success of this method hinges significantly on the mediator's ability, given their pivotal role in managing negotiations, to foster understanding and reconciliation among the parties involved. Thus, it becomes essential to broaden the pool of individuals qualified to perform this critical function.

This expansion is particularly vital given that the rise of criminal mediation has been driven by increasing pressures on the judicial system, yet it remains under the strict oversight of the public prosecutor's office, which retains the ultimate authority to approve or reject mediation proposals.

For mediation to effectively manage cases of juvenile delinquency, it must be integrated into every stage of the legal process—not merely before the initiation of a public lawsuit but throughout the trial proceedings. This comprehensive application is crucial to prevent the loss of intervention opportunities with juvenile offenders, especially in light of the rising rates of juvenile delinquency observed in Algeria in recent years.

¹⁶ياسر محمد سعيد بابصيل، "الوساطة الجنائية في النظم المعاصرة: دراسة تحليلية"، جامعة نايف العربية للعلوم الأمنية، كلية الدراسات العليا، قسم العدالة الجنائية، 2011، ص39.

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