



THE FATE OF PUBLIC PROSECUTION IN LIGHT OF THE NEW DEVELOPMENTS IN ITS ALTERNATIVES UNDER LAW 25/14

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Abstract:

This research paper examines the new developments in modern alternatives to criminal prosecution under Law 25/14, which includes the Code of Criminal Procedure, and their relationship to the fate of public prosecution. The Algerian legislature has introduced new alternatives to public prosecution that did not exist in the old repealed law, such as postponing the prosecution of a legal person and issuing warnings to perpetrators of violations and certain misdemeanors. It has also expanded the scope of older alternatives, such as mediation and the filing of records based on the results of preliminary investigations.

The aim of this research was to identify these developments and assess the extent of their impact on the general principles of criminal law. We concluded that, by providing for these alternatives, the legislature intended to reinforce restorative justice and to ease the burden on the judiciary in general.

Keywords: Public Prosecution, Alternatives to Public Prosecution, Criminal Mediation, Restorative Justice.

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INTRODUCTION:

The rules of criminal law and criminal procedure in the Algerian legal system are considered general rules, based on the State's right to punish, as the representative of society whose security and stability have been infringed. However, for certain purposes, the Algerian legislature introduced into the new Code of Criminal Procedure some legal rules that allow the Public Prosecution to use them individually, or to propose them to the parties as alternatives to public prosecution and as means of removing the effects of the crime before it enters the corridors of the judiciary.

To that end, the legislature provided in this law for certain new alternatives and expanded other alternatives that had existed in the former law before its repeal, with the aim of entrenching restorative or consensual justice in criminal matters, achieving social stability, and helping both parties to the dispute resolve it amicably and swiftly, بعيد from the complexities of the judiciary and its procedures.

Accordingly, the Public Prosecution may mediate to resolve criminal cases itself or through mediators appointed for that purpose in a limited number of crimes expressly specified by law. It may also close these cases on the basis of the principle of expediency, which is one of its recognized powers.

At the same time, the legislature introduced both the technique of sending warnings to perpetrators of certain violations and misdemeanors before initiating public prosecution, which depends on the extent of compliance with such warnings, and the mechanism of postponing criminal prosecution of a private legal person when it commits certain crimes as well.

The relationship between the expansion of alternatives to public prosecution under the new Code of Criminal Procedure in favor of consensual justice and the claim that the rules of criminal law are general rules, according to supporters of the traditional theory, is contradictory, and makes these rules special rules that are closer to the principles and procedures of the accusatorial system.

On the basis of all this, the problem addressed by this research revolved around how the legislature organized alternatives to public prosecution under the new Code of Criminal Procedure and the extent of their impact on the fate of public prosecution.



In order to answer this problem, we followed an inductive method suitable for presenting the new developments in alternatives to judicial prosecution and the objective sought from their adoption. Accordingly, we divided this research into two main sections: in the first, we examined the expansion in the scope of the alternatives to public prosecution already in force, and in the second, the alternatives introduced for the first time in this law.

THE FIRST TOPIC: THE EXPANSION OF THE SCOPE OF PREVIOUSLY ESTABLISHED ALTERNATIVES TO PUBLIC PROSECUTION

In line with the principles of the new social defense movement, which seeks to reform and humanize criminal punishment, the Algerian legislature, in the new Code of Criminal Procedure, expanded both the procedure of criminal mediation and the decision to discontinue proceedings on the basis of the results of preliminary inquiry and investigation, after the provisions governing each of them had been set out more narrowly in the old repealed law than they are in the new law.

FIRST REQUIREMENT: THE AUTHORITY OF THE PUBLIC PROSECUTION IN CRIMINAL MEDIATION

Mediation in criminal matters is based on the idea of negotiation between the offender and the victim regarding the consequences resulting from the commission of the offense, through the intervention of a third party, which may be the Public Prosecution. Its success results in repairing the harm suffered by the victim through redress and compensation.

It is therefore a consensual method between the parties to the dispute, in the hope of reaching an amicable solution aimed at protecting social relations. It is also a form of justice founded on the philosophy that there are no two persons who cannot understand one another, but only two persons who have not yet engaged in dialogue¹.

It is also a modern mechanism intended to reduce criminalization and punishment, while at the same time dealing with criminal cases through a non-judicial method that alleviates the burden on the courts, especially in light of the growth of crime and the increasing number of criminal cases brought before the judiciary.



The Algerian legislature first introduced criminal mediation through Law 15/02², which amended the old Code of Criminal Procedure, and it restated it in Articles 59 to 68 of the new Law 25/14³, with certain amendments contained in the third, fourth, fifth, and sixth paragraphs of Article 59, which established the following rules:

Firstly: The Authority Responsible for Conducting Mediation

The Public Prosecutor conducts the mediation personally or delegates that task to one of the mediators, who must submit the mediation report to the Public Prosecutor for approval and endorsement⁴.

In all cases, mediation is conducted at the court headquarters, after the negotiating mediators take the oath before the judicial council within whose jurisdiction they are appointed for the first time, according to the following wording: “I swear by Almighty God to perform my duties in the best possible manner and to preserve the confidentiality of the information that I become aware of during or on the occasion of the performance of my duties.”

Since the Algerian legislature regarded mediation as a model of modern social organization operating within the framework of the law⁵, it supported the Public Prosecutor, as the primary authority responsible for criminal mediation, with other mediators drawn from society who are neutral and entrusted with carrying out what is required of them in order to settle the dispute before it enters the judicial sphere. However, the conditions for selecting these delegated mediators, the manner of their appointment, their legal status, and their compensation scheme were left by the legislature to regulatory provisions.

Secondly: The Expansion of the Scope of Mediation

In the new Law 25/14, the Algerian legislature expanded the scope of mediation by adding new offenses to those previously covered. These offenses are set out in Article 61, which did not restrict mediation to a particular category of petty offenses, while it specifically listed the misdemeanors in which mediation may be conducted, as follows:

The offenses of insult, defamation, and violation of private life; the offenses of breach of trust, threats, false accusation, abandonment of the family, deliberate refusal to provide maintenance, and refusal to hand over a child; the offenses of



fraudulently seizing all or part of an inheritance before its division, or seizing jointly owned property or company assets; the offenses of issuing a check without sufficient funds, damage to property, theft, concealment, and fraud committed between relatives and in-laws up to the fourth degree; the offenses of intentional destruction of another person's property and the misdemeanors of unintentional and intentional assault and battery committed without premeditation, ambush, or the use of a weapon; the offenses of trespass against real property, agricultural crops, and grazing on another person's land; and the offenses of consuming food or drinks or benefiting from other services by fraudulent means.

Thus, the Algerian legislature added the offenses of breach of trust, theft, concealment, and fraud, when committed between relatives and in-laws up to the fourth degree, to the category of offenses in which criminal mediation is permitted.

In reality, this expansion does not serve the general nature of public prosecution, one of the characteristics of which is that it is not subject to waiver, nor does it support reconciliation between the offender and the victim. All of this diminishes the authority of the judiciary and conflicts with the judicial nature of punishment. It therefore constitutes an infringement upon the State's right to punish and its exclusive authority over that right.

FIRST REQUIREMENT: THE AUTHORITY OF THE PUBLIC PROSECUTION TO DISCONTINUE PROCEEDINGS ON THE BASIS OF THE RESULTS OF PRELIMINARY INQUIRY

As a general rule, discontinuance is one of the powers of the Public Prosecution under both the old and the new Code of Criminal Procedure. It is a measure resorted to by the Public Prosecution when it intends to choose a course for the public prosecution other than initiating it.

It is therefore an order issued by the Public Prosecution in the course of dealing with preliminary inquiries, by which it temporarily refrains from bringing the public prosecution before the trial court, without possessing any binding legal effect.

Both legal scholarship and case law in France and Egypt have agreed that a decision to discontinue proceedings issued by the Public Prosecution has no judicial value, because it is taken before the initiation of the public prosecution. Consequently, the Public Prosecution may reverse it for any reason⁶.



This discontinuance may be based on legal or non-legal grounds. Legal grounds are those established by the legislature, so that whenever one of them is present, the Public Prosecution must issue a decision to discontinue the case, such as the absence of the criminal character of the act committed, the existence of a ground of justification, the existence of a bar to punishment, or the presence of a restriction on the initiation of the public prosecution.

As for substantive or non-legal grounds, they are those related to the facts, such as insufficient evidence, the offender being unknown, lack of appropriateness of prosecution, and other similar reasons⁷.

Although the principal function of the Public Prosecution is accusation, since it acts as the claimant in the public prosecution on behalf of society, many states, in order to reduce judicial congestion and the accumulation of unresolved cases before the courts, have granted the Public Prosecution the authority to discontinue criminal case files on the basis of the results reached through preliminary inquiry.

This is what the Algerian legislature provided in Article 47/6 of the new Code of Criminal Procedure, which states: “A decision to discontinue proceedings shall be based on legal reasons or on the inappropriateness of prosecution. It shall be subject to review, and the complainant and the victim, if known, shall be notified of it as soon as possible and by any means whatsoever. Both shall have the right to lodge a complaint before the Attorney General within a period not exceeding five days from the date of their notification of the decision to discontinue proceedings.”

It may be observed that, through this article, the legislature retained the same grounds for discontinuance that existed in the old repealed law, and provided that such discontinuance is affected by means of a decision of an administrative nature, which is subject to review through a complaint before the Attorney General within five days from the date of notification. Otherwise, the right to challenge lapses, together with the disposal, by virtue of the discontinuance order, of the seized items.

The purpose of this provision is not so much to remove the rules of criminal law from the sphere of public law as it is to rationalize the use of public prosecution, prevent the accumulation of minor and unproductive cases before the courts, and, at the same time, reinforce the rights of victims to challenge decisions of the Public Prosecution to discontinue their criminal case files.



THE SECOND TOPIC: THE INTRODUCTION OF NEW ALTERNATIVES TO PUBLIC PROSECUTION

These alternatives appeared for the first time under this new law. Through them, the Public Prosecutor may issue warnings to the perpetrator of a misdemeanor or petty offense before initiating public prosecution, and may also postpone the criminal prosecution of a legal person under specific conditions provided by law.

FIRST REQUIREMENT: ISSUING A WARNING TO THE PERPETRATOR OF A PETTY OFFENSE OR A MISDEMEANOR PUNISHABLE BY A FINE OR BY IMPRISONMENT NOT EXCEEDING THREE YEARS, IN ORDER TO PRESERVE FAMILY OR NEIGHBORLY RELATIONS

The French legislature refers to this as a reminder of the law. The Algerian legislature set out its provisions in Article 57 of the new Code of Criminal Procedure, as an embodiment of the idea of restorative justice and the desire to reduce the burden of simple cases on the judiciary and the Public Prosecution, as previously explained. The legislature introduced this mechanism, which involves issuing a written warning to perpetrators of acts classified as petty offenses or minor misdemeanors punishable by a fine or by imprisonment not exceeding three years, in order to preserve family and neighborly ties⁸.

By examining this article, the conditions for the application of this procedure may be identified as follows:

The offense committed must be either a petty offense or a misdemeanor punishable by imprisonment not exceeding three years. Therefore, this warning is not issued in cases of felonies or misdemeanors punishable by imprisonment exceeding three years.

The perpetrator of the misdemeanor or petty offense must be a natural person, unlike the postponement of prosecution, which applies to offenses committed by a legal person, as will be explained later.

Its purpose must be the preservation of family and neighborly ties among members of society. In other words, the social interest is the primary objective of this warning.



This warning may be issued either directly or through the judicial police in order to put an end to the offense. The Public Prosecutor may close the file after verifying that the offender has complied with the warning addressed to him and has ceased the criminal acts committed by him. For that purpose, the Public Prosecutor may hear the victim or injured party regarding the matter.

SECOND REQUIREMENT: ENTERING INTO AN AGREEMENT PROVIDING FOR THE POSTPONEMENT OF CRIMINAL PROSECUTION OF A LEGAL PERSON GOVERNED BY PRIVATE LAW

These new powers granted to the Public Prosecutor, under Article 105 and the following provisions of the new Code of Criminal Procedure, reflect the idea of combining deterrence and prevention on the one hand, preserving public funds and safeguarding the rights of the public treasury on the other hand, and maintaining the economic entities or private companies accused of wrongdoing in operation and avoiding their bankruptcy, in the interest of the State and society on a third hand.

Firstly: Conditions for Entering into a Postponement Agreement

The law permits the Public Prosecutor, before initiating public prosecution, to conclude with a legal person governed by private law, and having committed one of the offenses provided for in Article 106, an agreement the substance of which is the postponement and deferral of criminal prosecution against it, in return for its undertaking to restore the funds, property, and proceeds disposed of in connection with those offenses, or their value, and to pay all financial sums due to the public treasury and to the public entities harmed by the offenses attributed to it, in many cases, namely⁹:

- If the preliminary investigation has yielded results that make the conviction of that legal person certain should criminal proceedings be brought against it.
- If the option of postponing criminal prosecution leads to the same results sought from a trial and shortens the time that judicial investigation might take.
- If it is possible to assess the damage resulting from the committed offense with respect to the public treasury and the harmed public entities as well.



- If recovering the rights of the treasury and the other harmed public entities better serves the public interest than sentencing the legal person to the penalties provided by law.
- If the legal person has demonstrated cooperation in order to put an end to the committed offense.
- If the legal person has shown its cooperation by imposing disciplinary measures against the person who committed the offense in its name and for its benefit, and has informed the judicial authorities accordingly.

Despite the fulfillment of all these conditions, the legislature has prohibited the proposal of an agreement to postpone criminal prosecution in several cases, namely:

- Where it appears that the legal person was established from the outset for fraudulent or criminal purposes.
- Where the legal person has prior convictions for one of the offenses provided for in Article 106 of this law.
- This article provides for a group of misdemeanors that prevent the legal person from benefiting from a postponement agreement if it has a prior record for one of them, namely:
 - The offenses provided for in Articles 119 bis, 418, and 419 of the Penal Code.
 - By referring to these articles, we find that Articles 418 and 419 have been repealed, whereas Article 119 bis concerns certain unintentional offenses relating to public office, such as causing the embezzlement, theft, damage, or loss of public or private funds, or items standing in their place, that were placed in the possession of a public official by virtue of or because of his office.
 - The offenses provided for in the law relating to the prevention of and fight against corruption, with the exception of bribery offenses.
 - The offenses provided for in the law concerning the repression of violations of legislation on exchange control and the movement of capital to and from abroad.



- The offenses provided for in the law relating to the fight against smuggling.
- The offenses provided for in the legislation relating to invoicing.
- The offenses provided for in the Currency and Exchange Law.
- The offenses provided for in the legislation relating to the stock exchange for transferable securities.
- Customs offenses.
- The misdemeanors of smuggling and tax fraud provided for in financial and tax legislation.

Secondly: Obligations of the Legal Person as a Party to the Agreement to Postpone Criminal Prosecution

The postponement of prosecution is conditional upon the legal person being subject to the obligations set out in Article 107, namely:

- The payment of a financial fine to the public treasury not exceeding 30 percent of the average annual turnover for the last three years.
- Compensation of the harmed public entity concerned by the agreement.
- Submission to an internal reform program to support integrity and prevent the offenses provided for in Article 106 above, the preparation and monitoring of the implementation of which shall be undertaken by the expert, experts, or qualified body appointed by the Public Prosecutor.
- Submission to any other obligation that the Public Prosecutor deems appropriate.
- In calculating the amount of the fine, particular account shall be taken of the damage suffered by the public treasury, the undue benefits obtained from the offense, or the turnover resulting from the contract or transaction connected with the criminal acts.
- The Public Prosecutor may seek the assistance of one or more experts to assess the amount of the fine or compensation provided for in this article.
- The amount of the fine or compensation may be paid in accordance with a schedule determined by the Public Prosecutor, taking into account the



amount of the fine or compensation and the financial position of the legal person, provided that in all circumstances it does not exceed four years.

- The legal person shall bear the costs arising from the assignment entrusted to the expert, experts, or body referred to in this article.
- The extinction of public prosecution shall not prevent the other parties harmed by the offense from pursuing their civil rights before the civil courts¹⁰.
- Where the criminal acts attributed to the legal person are of a cross-border nature and a foreign judicial authority has reported them, the Public Prosecution may, through the Ministry of Justice, apply the procedures provided for in this chapter in consultation with the foreign judicial authority within the framework of the relevant international agreements¹¹.

Thirdly: The Effects of the Legal Person's Failure to Comply with the Terms of the Agreement

These are provided for in Article 112 of Law 25/14. In this case, the Public Prosecutor must notify the legal representative of the legal person of the suspension of the implementation of the agreement postponing its criminal prosecution, whether the failure to comply is partial or total. This suspension takes effect immediately upon its direct notification to the legal representative of the legal person.

Fourthly: Procedures for Prosecuting the Legal Person in the Event of Breach of the Terms of the Agreement

These are set out in Article 113 of Law 25/14. All criminal prosecution procedures against the legal person shall be taken if it fails to fulfill all or some of the obligations imposed on it under the terms of the agreement postponing its prosecution.

In this case, that is, where proceedings are brought against the legal person for the reasons mentioned in the first paragraph, it is not permissible to use against it, whether before the investigating authority or the trial court, the content of what was stated or submitted by its legal representative, except where the Public Prosecution had prior knowledge thereof.



In all cases, the trial court must take into account in its judgment whatever obligations were partially performed by the legal person before the suspension of the implementation of the agreement postponing prosecution.

CONCLUSION:

Through this research paper on the fate of public prosecution in light of the new developments in criminal prosecution under Law 25/15 containing the Code of Criminal Procedure, we reached a number of findings, the most important of which may be summarized in the following main points:

The Algerian legislature, through expanding the provision of alternatives to public prosecution, aims to establish the concept of restorative justice in Algerian laws in general and to reduce recourse to the courts in cases where solutions can be found outside them.

The Algerian legislature also aims, by establishing alternatives to public prosecution, to achieve the interests of individuals by preventing their involvement in judicial proceedings and procedures, and the resulting costs, conviction, and other effects related to criminal records.

Despite providing for and expanding alternatives to public prosecution, the Public Prosecution has not abandoned its role in implementing the terms of criminal mediation, issuing warnings, postponing the prosecution of private legal persons, and other such measures.

The rules of consensual restorative justice within the new Code of Criminal Procedure are exceptional rules. The general rule remains that public prosecution is not subject to waiver or settlement, and therefore these rules do not remove criminal law in general from the domain of public law.

Recommendations:

Public prosecutors should be supported with more assistants in order to ensure comprehensive handling of criminal case files and the distribution of tasks among them, because this law has added many burdens to the Public Prosecution that require more time, effort, and personnel.

The legislature should avoid excessive expansion in enacting new alternatives, so that this does not affect the general nature of criminal law rules, and should be satisfied with those already established.



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- 1- Omar Salem, *Toward the Simplification of Criminal Procedures*, a Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, no date, p. 127.
- 2- Ordinance 15/02, dated 23 July 2015, amending and supplementing Ordinance 66/155, dated 8 July 1966, containing the Code of Criminal Procedure, Official Gazette No. 40, repealed.
- 3- Law 25/14, dated 13 August 2025, containing the Code of Criminal Procedure, Official Gazette No. 54.
- 4- Article 59/3 of Law 25/14 provides: "The Public Prosecutor shall conduct the mediation or delegate one of the mediators to do so. In this case, the delegated mediator must submit the mediation report to the Public Prosecutor for approval and endorsement."
- 5- Mohamed Hakim Hussein Al-Hakim, *The General Theory of Settlement and Its Applications in Criminal Matters*, a Comparative Study, Dar Al-Kutub Al-Qanuniyya, Egypt, 2005, p. 39.
- 6- Jamal Drissi, "The Disposition by the Public Prosecution of the Results of Preliminary Inquiry Without Referring Them to the Trial Court," *Annals of the University of Algiers 1 Journal*, Vol. 37, No. 2, 2023, p. 57.
- 7- Ali Chamlal, *New Developments in the Algerian Code of Criminal Procedure*, Book One, Dar Houma, Algeria, p. 54.
- 8- Article 57 of Law 25/14 containing the Code of Criminal Procedure.
- 9- Article 119 bis of the Algerian Penal Code provides that any public official, within the meaning of the law relating to the prevention of and fight against corruption, who intentionally causes, as a result of failing to observe the laws, regulations, or applicable security rules, the theft, squandering, embezzlement, or destruction of public or private funds, or items standing in their place, or documents, instruments, contracts, or movable property placed in his possession either by virtue of or because of his office, shall be punished by imprisonment from three years to five years and a fine from 300,000 Algerian dinars to 500,000 Algerian dinars.
- 10- Article 110 of Law 25/14 containing the Code of Criminal Procedure.
- 11- Article 111 of the same law.

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- 9- Article 106 of Law 25/14 containing the Code of Criminal Procedure.
- 10- Article 107 of Law 25/14 containing the Code of Criminal Procedure.
- 11- Article 110 of Law 25/14 containing the Code of Criminal Procedure.
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