

LEGAL ADAPTATION OF CONSENSUAL JUSTICE

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Abstract:

For a long time, criminal justice has relied on the public lawsuit as a means of enforcing the state's right to punish, as it is a lawsuit administered by the Public Prosecution through a judicial trial in which it acts as the prosecutor against the defendant, who asserts his right to freedom and frequently denies the allegations, ultimately seeking to impose a penalty on the defendant, typically resulting in a loss of liberty.

Although consensual justice in its various forms represents practical solutions to the problems of criminal justice in general, it reflects the philosophy of this case and the harm it has caused.

This research paper seeks to illuminate the legal adaptation of consensual justice by exploring the legal nature of this system and assessing its legitimacy in both crimes against individuals and those impacting the public interest

Keywords: public action- public prosecution -consensual justice- legal adaptation- legality- crimes.

Introduction

Determining the legal nature of any phenomenon involves the process of adapting it to establish whether it belongs to one legal system or another. Consequently, investigating the legal nature of the consensual justice system entails adapting it to determine the legal framework it fits into.

By examining different legislation, it is evident that the degree of legislative intervention in limiting the freedom of the reconciling parties varies based on the nature of the crimes committed. In crimes against individuals, the parties have considerable freedom to set the terms of conciliation, constrained only by general rules. In

contrast, for crimes against the public interest, the parties face certain restrictions that limit their ability to determine the conditions of conciliation.

Certainly, there is a recent trend in contemporary criminal legislation that is increasing towards consensual justice, despite the trend that rejects the use of this system in public lawsuits, as it is viewed with suspicion and without encouragement, as a source of contamination of criminal procedures that must be eliminated.

There are considerations put forward by criminal law jurists to justify resorting to consensual justice to end the public lawsuit without a judicial ruling, however, others believe that these considerations alone are not sufficient to justify this.

This research aims to identify the legal adaptation of consensual justice through explanation and analysis of three (03) requirements: In the first section, we discuss the legal nature of this system, followed by its legitimacy in crimes committed against individuals in the second section, and its legitimacy in crimes harmful to the public interest in the third section. To comprehensively understand all aspects of the topic, we employed the analytical method, which is most suitable for such studies.

The first requirement: the legal nature of consensual justice

Jurisprudence has clearly varied in its attempt to determine the legal nature of this system, especially since consensual justice is still just applications that the legislator takes here or there, without a general theory covering it. Perhaps the source of this disagreement lies in the multiplicity and diversity of forms of consensual justice, regardless of their legal names¹, and is also due to the difference in the angle from which each jurist views this system as a means of managing the public lawsuit², because the various criminal legislation stipulates these forms in certain circumstances and under specific conditions, and does not specify its legal nature, leaving this issue to jurisprudence³.

Thus, the question arises regarding the legal nature of the consensual justice system: Is it contractual, punitive, or of a unique nature? We will explore these possibilities below:

The first section: The contractual nature of consensual justice

Consensual justice emerges as one of the means of modern criminal policy, which aims to make this policy more effective and more considerate of human rights, as this system finds its historical origin in the realm of civil law, and despite its special nature, which derives from its criminal source and its negative impact on public lawsuits, it remains, in terms of reference, connected to the civil law, which is considered its original source⁴, therefore, there is no difficulty in ascertaining its purely contractual nature, but the matter is different in the penal articles, so it is impossible to talk about a single legal nature, because the criminal legislator has not yet adopted a general theory of consensual justice in the penal articles, convinced that some of its applications are included, whether in public law or some specific laws⁵.

Some legal scholars view the conciliation between the accused and the victim as a civil contract, where both parties' intent is to resolve the effects and damages caused by the crime. This is typically achieved by the accused paying a sum of money as compensation to the victim in exchange for not initiating or continuing criminal proceedings. Thus, the parties will not only manage the circumstances that created the contract but also address the resulting consequences, as criminal conciliation parallels civil conciliation.⁶, considering the significant similarity between conciliation as a procedural agreement that resolves the public lawsuit through the will of the victim and the accused, and civil conciliation, which similarly concludes disputes by mutual consent without judicial intervention.⁷

This similarity has led some legal scholars to argue that criminal conciliation is essentially a two-party administrative mechanism for concluding judicial prosecution, closely akin to civil conciliation. They contend that the conciliation decision has an administrative character, and the compensation paid by the accused to the victim is determined through a contractual agreement to resolve the harm caused by the crime.⁸

According to the traditional perspective, conciliation in criminal cases is similar to conciliation under civil law. It is based

on a binding contract between the parties, involving mutual concessions aimed at resolving the existing dispute.

In this area, jurists Allix and Roux confirm that customs conciliation contains all the elements stipulated in Article 241⁹ of the French Civil Code regarding conciliation in civil disputes, and they reject the point of view that customs conciliation is not a binding contract for both parties, but rather, it is a contract of a special nature, through which the administration has the authority to exempt the accused from penalty if conciliation is sought. ^{.10}

However, this opinion should not be taken in its entirety, because criminal conciliation, although it participates with civil conciliation in its conclusion by meeting the will of the two parties and determining its amount based on their agreement, this does not preclude the necessity of distinguishing between the two, as criminal conciliation does not result in resolving a civil dispute revolves around private interests, but it results in the termination of the public lawsuit or the suspension of the penalty's implementation, depending on the circumstances and this effect occurs as soon as the criminal conciliation is finalized, even if it wasn't the intent of both parties, unlike civil conciliation, where the effects are determined by the parties' will¹¹.

Therefore, the legislator's intervention in determining the criminal consequences, such as dismissing the public lawsuit and the criminal judiciary's lack of jurisdiction, does not affect the legal nature of the conciliation. The elements of conciliation are complete and do not include the dismissal of the public lawsuit, as conciliation may sometimes pertain to a crime where conciliation is not allowed, yet it still has consequences for the involved parties¹², In reality, the perpetrator and the victim do not reconcile regarding the public lawsuit; rather, they reach an agreement, with or without compensation, concerning the damage caused by the criminal act, and this damage is viewed as a tort for which the perpetrator must compensate the victim according to the provisions of private law.¹³.

However, this view is rejected because the termination of the public lawsuit is the most significant effect of criminal conciliation and serves as a primary incentive to pursue it¹⁴. The conciliation leading to the expiration of the public lawsuit is only agreed upon due to the occurrence of a crime, in accordance with the legal permission

granted to the accused as a party to the criminal dispute, rather than based on any authority granted to him as a civil individual¹⁵.

Previous criticisms have led some jurists to say that conciliation in economic crimes is a form of administration contracts that are subject to the provisions of private law, and it is closer to contracts of adhesion in which one party imposes its conditions on the other, without discussion by the other party¹⁶. Although there is a similarity between an adhesion contract and a criminal conciliation, it remains only an apparent similarity, as we cannot accept that a criminal conciliation is an adhesion contract, for the following considerations:

- The administration or the Public Prosecution is not solely responsible for setting the terms of conciliation, such as determining the amount of the fine. Instead, the law prescribes these terms in advance. Their role is limited to implementing the effects of conciliation once its conditions are met, including the accused's acceptance and payment of the fine.
- In an adhesion contract, the other party accepts the terms without discussion, as they are compelled to agree, in contrast, in conciliation, the accused is not obligated to accept the terms in all cases; they have the option to appear before the court if they believe it serves their interests better.

From the above, although there are similarities between criminal and civil conciliation, they differ in terms of their subject matter, scope, and the effects they produce..¹⁷

The focus of the lawsuit differs, as criminal conciliation pertains to the public lawsuit, which deals with the penalties imposed on the perpetrator of the crime. In contrast, civil conciliation typically addresses financial rights and aims to compensate for damages.¹⁸

Regarding the scope of each, criminal conciliation can only occur in the context of a crime, as it is permitted by law specifically for the perpetrator of the crime, who is a party to the criminal dispute rather than a private individual engaged in a civil act, while civil conciliation expands to include all civil disputes, and the opponents conclude it with the authority they have to act, not as opponents in the case, and civil conciliation is only restricted by the legality of the contract and the idea of public order and public morals¹⁹.

As for the effects resulting from each of them, the effect resulting from the criminal conciliation is the expiration of the public lawsuit or the suspension of the implementation of the criminal penalty and all the effects resulting from the ruling, and its effect also depends on the acceptance of it by the Public Prosecution or the court, as the case may be²⁰. In contrast, the effect of a civil conciliation contract is to resolve the dispute between the parties, resulting in the dismissal of the plaintiff's lawsuit. It carries the authority of *res judicata*, meaning the plaintiff cannot reinitiate the lawsuit once the conciliation contract is signed and its validity and necessary conditions are met.²¹

In the face of the criticism directed at the opinion that says that criminal conciliation is a civil contract, and to the opinion that says that criminal conciliation is an administrative contract, those who cling to the contractual character of conciliation tended to say that conciliation in criminal matters is a compensatory criminal contract, this is because conciliation in this case has a special nature, and the criminal agreement is not a penalty in the traditional sense, as it seeks to eliminate the penalty, nor is it an administrative sanction because its contractual nature is incompatible with the administrative sanction, in addition to being a reaction arising from a criminal crime²², as it is a contract that requires the meeting of the wills of both the accused and the victim, in which the accused is obligated to pay a sum of money as compensation for the damages resulting from the crime he caused, to avoid criminal proceedings²³.

Another viewpoint in jurisprudence argues that criminal conciliation is a legal act impacting criminal procedures, as it is executed and enforced at the discretion of the victim or their representative to resolve the public lawsuit. In criminal matters, conciliation requires that the dispute be current or previously existed, rather than merely potential, this contrasts with civil conciliation, where the dispute can be hypothetical, and conciliation serves a protective role. This distinction underscores the fundamental difference between criminal and civil conciliation.²⁴

Finally, we support the perspective that rejects the contractual nature of conciliation in criminal matters. Contracts are legal acts whose effects are shaped by the mutual will of both parties, which is

not the case with criminal conciliation. In criminal conciliation, the law pre-determines the effects once approval is granted. The parties involved only need to agree to the conciliation, and its effects will be realized upon its completion.²⁵.

The second section: The procedural nature of consensual justice

The consensual justice system requires that a conciliation be made between the accused and the plaintiff's representative or defense, the effect of which is arranged immediately upon agreement, because the public lawsuit ends as soon as this agreement is completed, without the accused doing anything on his part, even though this agreement requires him to pay in exchange for this conciliation.

A side of jurisprudence believes that the conciliation that is concluded between individuals is a voluntary procedural system that requires the agreement of two wills, and it has a legal effect represented by the cancellation of the state's right to punish, based on the fact that it is sufficient to achieve penal conciliation that the will of the parties is directed to the mere legal fact that constitutes it, regardless of its implications, because the legal effects are arranged by the law²⁶.

Here, we find that criminal conciliation between individuals is a procedural right for the accused, whose acceptance on his part does not depend on it being presented to him by the Public Prosecution, but rather he may take the initiative to declare his desire to implement it²⁷, and as for conciliation in economic and organizational crimes, it is not the right of the accused in all crimes, as the administrative body or the indictment authority is not obligated to respond to it if the accused requests it, but must agree to it²⁸. Criminal conciliation is a procedural legal action, and the legislator is the one who determines this procedure by stipulating it and indicates its restrictions and the amount that must be paid, and the administration does not have the right to specify other conditions or restrictions, but rather, if it applies it, it must adhere to what the law stipulates.

Therefore, in their view, conciliation is considered a legal act in the narrow sense, and its scope is not achieved until after the crime occurs, and it leads to the end of the public lawsuit, and whether it

takes place before or after filing the lawsuit, it is considered a procedural act²⁹.

Section Three: The punitive nature of consensual justice

A criminal penalty is the consequence established by criminal law for violating its prohibitions or commands. It represents the punitive response to the commission of a crime and is characterized by its punitive nature, imposed on the perpetrator or anyone who contributed to the crime. The penalty is defined by law, is personal, and can only be applied to the individual who committed the offense. It must be proportional to the severity of the crime and should be characterized by fairness.³⁰.

Some French jurisprudence, in exploring the legal nature of conciliation in economic crimes, has emphasized its punitive aspect. This view is based on the measures and obligations imposed by criminal conciliation on the accused, such as paying a sum of money or surrendering goods or products related to the crime. These measures are akin to significant financial penalties outlined in the Penal Code, such as fines and confiscation³¹.

Some argue that in economic crimes, the administration has the authority to impose penalties as prescribed by law, based on its capacity to safeguard state interests, therefore, it was necessary to grant the administration the power to impose penalties at its discretion. The accused's compliance with the penalty issued by the administration does not negate its punitive nature. Furthermore, applying a criminal penalty through conciliation, outside of judicial procedures, does not diminish the punitive character of the conciliation³².

In this context, another perspective in jurisprudence holds that the rationale behind penal conciliation is rooted in the nature of the criminal offense. The administration shares in the judicial authority when initiating conciliation, as the agreement pertains to the penalty imposed through conciliation. Given that these crimes attack state interests, it is logical for the penalty to retain a criminal character, and the financial payments made by the offender to terminate the public lawsuit are considered fines with a punitive nature, as they inflict financial harm on the accused. Thus, these payments are seen as criminal penalties.

As for conciliation in regulatory violations, what the violator pays is considered a non-judicial financial penalty, stipulated in contemporary legislation as an exception to the principle of judicial penalty and its guarantee of consent, and here the legislator balanced individual freedom with quick and complete justice, and there is no doubt that the citizen will find an interest, even if possible, in quick and complete justice³³.

Conciliation usually assumes the application of a financial penalty that generates a deterrent effect on the hearts of those for whom money represents a high status, and this means that the idea of coercion and coercion that characterizes criminal law in general is present in penal conciliation, which has led some to say that penal conciliation is of a punitive nature, in which the administration replaces the judiciary, and imposes a penalty according to a decision it issues unilaterally³⁴.

Another criticism is that conciliation in economic crimes lacks the characteristics of a penalty. The essence of a criminal penalty extends beyond just the legislator's decision following the crime; it also involves being formally imposed by a competent court through a ruling that establishes the perpetrator's responsibility³⁵.

The previous opinion has been criticized on the grounds that conciliation is not listed among the penalties prescribed for this type of crime and therefore is not regarded as a criminal penalty, additionally, it conflicts with the nature of a penalty, as conciliation is not restricted solely to the accused but is also available to anyone with an interest in the matter³⁶.

In cases involving crimes against individuals, some view conciliation as an alternative financial penalty contingent on the accused's consent. This perspective holds that the payment made by the accused to the victim constitutes a form of suffering for the accused, as it involves the forfeiture of part of their financial resources. Thus, in this context, conciliation is seen as a consensual financial penalty alternative.

The alignment with the objectives of a penalty reinforces the punitive nature of criminal conciliation, and conciliation plays a significant role in deterrence -particularly for the victim- by compelling the accused to remedy the damage caused by their crime through compensation. This requirement aids in deterring the

accused from committing future offenses, and such fair and timely compensation demonstrates how conciliation can achieve justice..³⁷

Criminal justice involves addressing wrongdoing with a proportionate response, which is exemplified when a portion of the accused's money is allocated to the victim, and this compensatory measure serves to alleviate the harmful effects of the crime and provides the victim with a sense of justice and closure.

However, a side of jurisprudence believes that criminal conciliation is a procedural system that leads to the termination of the public lawsuit without a ruling, but it does not have positive authority with regard to proving or denying the accusation, thus, it holds no authority before the civil judiciary, and its effect is confined to the negative authority of terminating the lawsuit. Consequently, the amount agreed upon in the conciliation is not regarded as a penalty, and its provisions are not applicable to it.

Similarly, penal conciliation cannot be classified as a penalty, as it lacks the essential characteristics of a penalty, which we will detail below:

First: the legitimacy of the penalty.

The principle of legality is the fundamental cornerstone and primary safeguard of penalties, and this principle underpins all other principles governing penalties at any stage. It asserts that only the legislator has the authority to define the penalties applicable for violations of criminal laws³⁸.

This principle has a constitutional value in the Algerian legal system, as the amended 1996 Constitution stipulates in Article 58 that: "There is no conviction except under a law issued before the commission of the criminal act", while Article 160 states: "Criminal penalties are subject to the principles of legality and personality", which is confirmed by Article 1 of the Penal Code by saying: "There is no crime, penalty, or security measure except by a legal provision".

Thus, the determination of penalties is exclusively the responsibility of the legislative authority, and applying penalties not established by this authority undermines the legitimacy of the penalty, rendering it invalid, and since conciliation is neither explicitly defined in the legislation nor listed among the penalties

recognized by the Penal Code, classifying it as a penalty contradicts the principle that 'no penalty exists without a legal text'.

Second: Judicial of the Penalty

Judiciality of the Penalty is the exclusive application of the penalty by the judge alone, which is a guarantee of the principle of separation of powers, as the Penalty is a criminal penalty that may not be imposed except after judicial intervention by the competent criminal judiciary, to protect individual freedoms and preserve people's confidence in the judiciary, as it possesses all the conditions of integrity and competence and knowledge³⁹.

The Algerian Constitution stipulated this principle in Article 164, saying: "Judges are competent to issue rulings", and Article 1 of the Code of Criminal Procedure confirmed it by saying: "Public lawsuits for the application of penalties shall be initiated and conducted by judges or employees entrusted to them by law".

Since a penalty impacts individual rights, it is crucial that the application of penalties be entrusted to an entity characterized by impartiality, integrity, and independence—the criminal judiciary. Penalties must be imposed based on a ruling from a competent criminal court, in contrast, conciliation in cases involving crimes against individuals is dependent on the parties' decision to accept or reject it, and they can reach an agreement outside the courtroom, with the judicial authorities' role limited to formalizing and verifying the conciliation, so it conflicts with the judicial characteristic of penalty.

Third: the justice of the penalty

Justice in penalty requires that it be applied equally to all individuals without discrimination, ensuring that the penalty is proportional to the criminal act committed, and it also necessitates that the penalty be tailored to the personal circumstances of the offender. While the law prescribes uniform penalties, no one can evade responsibility based on their birth, wealth, lineage, or religion. Everyone is equal before the law⁴⁰, which is stipulated in Article 158 of the Constitution, which says: "The basis of the judiciary is the principles of legality and equality, and everyone is equal before the judiciary".

These principles are undermined by the dominance of will in determining the amount of conciliation, as neither the victim nor the

accused is obligated to consider these principles when agreeing to conciliation

After examining various jurisprudential opinions on the legal nature of criminal conciliation, it is clear that this issue is contentious among jurists, depending on their perspective on the system. Consequently, attributing a definitive legal nature to consensual justice is challenging, as each opinion has its merits, making it difficult to entirely dismiss or accept any single viewpoint, additionally, each opinion has its own shortcomings, which complicates its acceptance and validation⁴¹.

Thus, after researching the legal nature of penal conciliation, which revealed that it has a contractual nature that appears in how it is concluded, and a punitive character that appears in some of its effects, we see that the legal nature of penal conciliation does not mean giving priority to one nature over another.

In fact, consensual justice, in its various forms and the distinct mechanisms of its work, is based on one essence, which is conciliation, which derives its idea from being a means of resolving a dispute that was supposed to be resolved by applying the rule of law by force and coercion by public authority, and every conciliation cannot be without agreement, whether this agreement is Its source is the will of the opponents themselves or the text of the law⁴².

Since consensual justice is founded on the concept of conciliation, which seeks to avoid engaging in a public lawsuit with its standard procedures and to save the state, the accused, and the victim from the effort, time, and cost associated with certain crimes, it functions merely as a procedural system, and its legal effect is the termination of the state's right to impose a penalty, given that the dispute can be resolved through other means.

Although, as previously discussed, conciliation is the core of consensual justice, this system is predominantly defined by four key characteristics:⁴³

- A- In essence:** *onsensual justice fundamentally relies on consensual conciliation, whether directly between the victim and the accused or between the accused and the state. If this element is overlooked, the public lawsuit proceeds*

according to its established traditional procedures, as prescribed by law.

- B- In terms of the application mechanism:** consensual justice has different application mechanisms, varying from one form to another according to the crimes to which each form is applied, the philosophy that the legislator targets, and the interests that he seeks to achieve, therefore, each form has its own set of conditions and rules.
- C- In terms of the means of implementing it:** Despite the restorative, consensual nature of consensual justice, its implementation does not always take place outside the judicial field, regardless of the body entrusted with administering this justice, or supervising its administration.
- D- In terms of its effects:** Forms of consensual justice differ in their effects: some entirely prevent the imposition of a criminal penalty, while others may lead to a reduced penalty or alternative measures, and we will explore these variations in detail in the second section of this research.

The second requirement: The legitimacy of consensual justice in crimes of assault on individuals

It is recognized - at least according to prevailing jurisprudence - that with the occurrence of a crime, the state has a right to punish whoever committed this crime, and as long as this right is established, a legal bond is created by its establishment between the state, in its capacity as a legal system, and the perpetrator of the crime. Thus, through this bond, the state holds the right to impose a penalty on the perpetrator of the crime, based on a ruling issued by a court specialized in criminal cases, and the state's right to impose a penalty is considered one of its most significant powers against individuals.⁴⁴

A crime is regarded as an assault on society as a whole, even if the harm is limited to an individual, and the state alone has the authority to impose penalties on offenders, as it acts as the guardian of society, upholding its interests and striving to maintain security and stability, it is also the sole authority in defining crimes and penalties due to its legislative power. While material damage to the victim can be remedied through financial compensation, moral

damage can only be addressed through moral compensation, which reassures the victim that they are equally valued by society as the perpetrator⁴⁵.

However, the state recognized for the victim of some crimes the right to terminate the public lawsuit in agreement with the perpetrator and suspended the state's right to penalty, considering that punishing the perpetrator depends on the will of the victim and the extent of his desire for revenge⁴⁶, as in this case, the legislator outweighs the interest of the victim over the interest of society because the harm to the victim is greater than what happened to society⁴⁷.

Criminal jurisprudence varies in its justification for limiting the state's power to punish based on individual consent, resulting in several theories, which we will present as follows:

The first section: the theory of special crime

Some argue that crimes against individuals are private crimes, a perspective common in ancient legislation, and according to this view, the punishment for such crimes depends solely on the victim's wishes and consent. Therefore, the victim has the right to decide whether the offender should be punished, and state agencies should intervene only at the victim's request⁴⁸.

Some contend that this theory is rooted in one of the principles of the indictment system. In this view, the public lawsuit originally belongs exclusively to the victim or their relatives, or it is considered a matter of public concern, with the will of the individual who initiated the lawsuit being expressed by a private citizen⁴⁹.

Some have sought to justify limiting the state's right to punish based on the classification of crimes into general and private crimes, and this distinction affects both the nature of the lawsuit and the type of penalty. In cases of private crimes, the lawsuit is considered solely the victim's prerogative, which has the option to reconcile or waive their claim⁵⁰.

To justify restricting the state's authority to punish crimes that primarily affect individuals, the concept of private crime is invoked, and according to this view, such crimes are seen as personal assaults on the victim without extending their harm to society at large. Thus, the state should only exercise its right to impose

penalties at the victim's request. Consequently, in these cases, the lawsuit is considered the exclusive right of the victim, and the state must adhere to the victim's wishes.

Despite the logic of this opinion, some refused to justify restricting the state's right to punish with the idea of a private crime, on the basis that contemporary legal thought considers a crime to be considered an aggression against the entire society even if its harm is limited to one of its individuals, and therefore the state alone has the authority to punish the offender. Being a representative of the community and defending it.

Once a crime is committed, the state must satisfy the public sense of justice, which is achieved by pronouncing and implementing the penalty. Therefore, the state's right to penalty cannot be waived for any reason, and if it grants individuals the authority to prosecute the accused, this is a privilege and not a right⁵¹ that allows individuals to control the imposition or prevention of penalty⁵².

Furthermore, in contemporary legislation, all crimes are treated as general crimes, even those where initiating legal action depends on the victim's complaint, and their general nature remains intact, and they are not categorized as private or special crimes⁵³.

From the above, it is evident that this theory fails to justify limiting the state's power to punish, and therefore it is not a valid foundation for consensual criminal justice. Consequently, this theory no longer holds relevance in contemporary criminal thought.

The second section: The theory of balancing interests

Proponents of this theory argue that limiting the state's power to punish based on individual consent is rooted in the principle of balancing interests and prioritizing one over the other, and they assert that even though a crime may directly impact the victim's rights, it is still an assault on society as a whole due to its breach of public order and the principles of security and stability. Thus, when the legislator ties the power to impose penalties to the victim's will, it seeks to balance the competing interests affected by the crime, prioritizing one over the other. For example, in cases where the crime directly impacts the victim's interests, such as crimes involving honor, reputation, and family matters, the victim's interests are given precedence over societal interests⁵⁴.

Thus, it is estimated whether his interest requires punishing the perpetrator or not, either by entrusting the state with redressing his rights or preventing it from inflicting penalty by concluding a conciliation with the accused, and the legislator here does not intend to consider these crimes as private crimes:

This theory aligns with the current trend in modern legislation, which emphasizes greater attention to the victim and grants them a significant role in the criminal justice process, this approach aims not only to uphold society's right to impose penalties but also to ensure compensation for the damages suffered by the victim as a result of the crime⁵⁵.

While this theory is widely supported in jurisprudence, we argue that it is based more on practical considerations and the benefits gained from restricting the state's power to punish according to the victim's will, such as through filing or waiving a complaint or allowing conciliation, rather than on solid scientific justification for such limitations.

Section Three: Suitability (appropriateness) Theory

Although the proponents of this opinion acknowledge that the crime is an assault on society, regardless of who the victim is, they believe that restricting the state's power to punish by the will of the victim is based on considerations of suitability (appropriateness), given that the state's insistence on punishing the accused may not achieve the desired benefit, due to the victim's reluctance. Sometimes the state authorities are required to help prove the crime against the accused due to his connection to him, and the benefit that accrues from bringing the offender to trial is not proportional to the effort, time, and money expended, despite the victim's willingness to accept material and moral compensation, consequently, proponents of this view argue that it is inappropriate for the state to pursue punishment in such cases, particularly when the crimes in question are relatively minor in nature.

Modern states are not required to exercise their right to punish in every situation. They may choose to forgo punishment if it is deemed incompatible with their objectives or if these objectives can be met through alternative means, and this flexibility is reflected in the constitutions of many countries, which acknowledge the state's right to grant pardons⁵⁶.

Proponents of this theory advance many arguments, which we summarize in the following points⁵⁷:

- This theory is consistent with the purpose of legislation, both substantive and procedural, which seeks to combat crime because to activate this fight, its means must be multiple, and the legislator must draw up the general framework for these means, and leave it to the Public Prosecution to individualize these means according to its discretionary authority.
- It is characterized by flexibility, as it takes into account the seriousness of the crime or the minor nature of the resulting harm, and this approach relies on various factors that can be assessed, including the victim's condition, the personal circumstances of the accused, and the extent of the damage or loss suffered by the victim.
- It aligns with the principle of utilitarianism, where both the penalty and the public lawsuit are applied based on their social benefit, and this principle guides the Public Prosecution in handling the case, ensuring that actions are taken with consideration for their overall societal value.
- This approach does not contradict the state's responsibility to prosecute offenders and enforce penalties for those who breach criminal laws. However, it acknowledges that the approach to tackling criminal behavior can vary, sometimes necessitating the decision not to pursue public prosecution for certain categories of crimes or specific types of offenders.
- It does not undermine the principle of equality before the law, as this principle is not about abstract mathematical equality but rather a relative concept that considers the personal circumstances of both the accused and the victim, moreover, the legislator has imposed checks on the Public Prosecution's discretion in deciding whether to pursue a case. Additionally, the law grants the civil plaintiff the right to initiate a public lawsuit, even if the Public Prosecution chooses not to proceed.

This theory, despite its validity, does not provide a scientific justification, as the one who contemplates this theory and the one before it calls for saying that each of them is complementary to the other, and combining them does not provide a scientific justification for restricting the state's right to punish by the will of individual.

Section Four: Theory of balancing the purposes of punishment

In addition to the three previous theories, some jurists have argued that restricting the state's authority to punish crimes against individuals is due to giving priority to the personal aspect of the purposes of punishment in these crimes to achieve the interest of society, and not the interest of the victim over the interest of society, as the owners of the theory of balancing interests have argued⁵⁸. The benefit to society lies in achieving the personal goals of punishment without necessarily resorting to punitive measures, thus, it is preferable to fulfill the objectives of punishment through means other than the application of criminal law when possible⁵⁹.

Proponents of this theory argue that the primary aim of punishment is to restore the victim's dignity, whose rights and interests were harmed by the aggression, and this involves alleviating the victim's sense of helplessness and humiliation, and addressing the feelings of resentment and animosity directed towards the aggressor.

If the material damage is repairable, the moral damage cannot be removed except by moral compensation based on the victim's feeling that he is no less important in the eyes of society than the perpetrator⁶⁰, which can only be accomplished when the victim feels their significance in the punitive process and has the ability to influence its direction according to their interests. It ensures that they do not perceive themselves as merely passive, marginalized observers of the state's retribution against the perpetrator, because the victim may not see the measures taken against the offender or the punishment imposed on him as sufficient to remove the hatred and anger within him, so his desire for revenge remains

Agreement and mutual understanding between the parties aid in restoring bonds of affection and harmony, reinforcing social and familial connections, which are crucial for societal well-being.

On the other hand, relying on criminal law to achieve the goals of punishment without actual enforcement may not align with the broader societal interest, as beyond the costs associated with utilizing the power of punishment, an increase in individuals with criminal records could indeed pose a threat to societal security and safety.

When the personal interests of the victim are prioritized over the broader societal interests, the legislator ultimately aims to serve the general welfare of society rather than individual concerns, because the state must - according to the opinion of the scientist Bentham - seek to achieve the greatest amount of benefit to society, so the state It may resort to imposing an appropriate punishment that achieves the public benefit, and it may also pardon the punishment if the pardon achieves a greater benefit than the punishment.

The rationale for relying on the will of individuals to limit the power of punishment in these crimes is to prioritize the personal aspect of the purposes of punishment to achieve the overall interest of society. This approach does not imply prioritizing the interests of the victim over those of society, as some opinions have suggested⁶¹.

Although this theory successfully justifies the implementation of the consensual justice system for certain crimes against individuals, like misdemeanors, it inadequately explains why it is not applied to more serious offenses such as murder. In such grave cases, while the victim's heirs might reconcile with the perpetrator, most statutory laws do not recognize or consider this reconciliation significant in these crimes⁶².

In conclusion, it can be observed that the state has started to limit its authority to punish based on the anticipated interest and benefit. Nonetheless, this does not imply disregarding the practical advantages of earlier theories, which can serve as reliable criteria for identifying crimes committed by individuals that are suitable for the consensual justice system without endangering society. The state does not intend to relinquish its control over all crimes and endanger societal security merely to achieve speed and cost-efficiency. This is evidenced by the fact that most legislations that have adopted this system exclude serious crimes from its purview, recognizing the significant threat these crimes pose to public order, security, and societal stability

The third requirement: The legitimacy of consensual justice in crimes harmful to the public interest

The primary purpose of punishment for crimes affecting the public interest is to force people to adhere to the regulations and provisions established to achieve that interest because of the

benefits it brings to society, as these benefits vary according to the nature of the interest protected by the criminalization text⁶³.

Criminal jurisprudence, when examining the legitimacy of the consensual justice system, categorizes crimes against the public interest into two main types: economic crimes and organizational crimes, as outlined below:

The first section: The legitimacy of consensual justice in economic crimes

The opinion of criminal jurisprudence differed in discussing the legitimacy of the consensual justice system in economic crimes, with some holding that the legislator permitted it to reduce the stringency of economic laws, while another group relied on the idea of suitability (appropriateness), considering that the crimes in which conciliation is permissible are not characterized by seriousness that requires punishment. In any case, a third group says that the financial penalties imposed on these crimes are of a civil nature, and the administrative authorities have the right to reconcile with the perpetrators of these crimes as long as it fulfills the rights of the state's public treasury⁶⁴, which we will present below:

First: Relying on extenuating circumstances

The Economic Penal Code is typically marked by its strictness and rarely allows for mitigation, except in exceptional cases. It incorporates a system of suspension of execution and mitigating circumstances for these crimes. Some jurists argue that this approach may not always align with the severity of the crime committed or the extent of the damage caused, such as evading payment of small customs duties, additionally, it may not correspond with the degree of criminal intent of the offender, who might not be fully knowledgeable about the provisions and regulations of economic laws in general⁶⁵.

Therefore, the legislator has identified consensual justice systems as an alternative, allowing the administration to avoid imposing severe penalties on violators. Simultaneously, these systems enable the state to collect its financial resources, according to proponents of this view, conciliation serves as an alternative to mitigating circumstances⁶⁶.

According to this opinion, when adopting consensual justice systems for crimes harmful to the economic and financial interests of the state, the legislator relied on his desire to mitigate the harshness of the Economic Penal Code and the strict policy it pursues with the perpetrators of these crimes.

However, it seems that this opinion did not find complete acceptance in jurisprudence, as some criticized this opinion, because even though forms of consensual justice involve mitigating the provisions of the Economic Penal Code, it remains an anomalous procedure that leads to the penalty not being implemented, and in light of this anomaly, it is necessary that It has another justification, and there is no place for this justification today after the tendency of the judiciary in many countries towards adopting mitigating circumstances and halting the implementation of economic crimes such as the crime of customs evasion⁶⁷.

Also, if conciliation is offered to the accused before the case is judged, it may harm the position of the accused, whose acceptance may be considered an surrender of his conviction, without reassurance that the competent administrative authorities will fulfill their promise to waive the criminal case against him.

Second - Relying on Suitability (appropriateness) considerations:

A side of jurisprudence believes that conciliation in economic crimes in general is based on considerations of suitability (appropriateness), due to the futility of insisting on punishing the accused, and wasting time, effort, and money prosecuting him if he is ready to make amends and pay the compensation requested from him by the victimized party. Therefore, judicial proof and the guarantees that the law stipulates in favor of the accused when he is tried lose their importance, especially since the crimes that fall within the scope of conciliation are mostly of low risk⁶⁸.

This opinion, although it is acceptable to justify conciliation in crimes of minor importance in general, is not sufficient to justify it in crimes related to financial resources, because these crimes are of a serious degree to the financial interest of the state, as they result in the loss of part of the financial resources that it invests in performing its duties towards individuals and society, which requires ensuring their fulfillment.

Also, considering suitability (appropriateness) alone as a basis for conciliation in these crimes necessarily requires giving the victim the freedom to estimate the compensation that he is obligated to pay, so the legislator must specify specific rules for estimating this compensation, such as not less than a specific percentage of the unpaid tax, while setting a limit. A minimum that is not permissible to be lowered from⁶⁹.

Third - Relying on the civil nature of financial penalties:

Supporters of this opinion say that the basis of consensual justice in economic crimes lies in the fact that the financial penalties imposed for these crimes are of a civil nature, as they believe that as long as these penalties represent compensation to the public treasury for the damage it suffered from the crime, the concerned administration is considered like a creditor and is entitled to fulfill his rights amicably, and for this purpose it may resort to the method of litigation, or the method of amicable understanding⁷⁰.

The legislator gave the administration the opportunity to reach an understanding with violators of the tax law, out of appreciation for the understanding that the tax relationship must be based on and conviction of the fairness of the tax obligations imposed on them, which is in line with the policy of tax criminalization, which is based on benefit, where the state does not care what punishment the offender bears, rather, it is sufficient to achieve her public interest in the form of the conciliation he makes with her.

However, this opinion is taken to mean that it does not justify not prosecuting the accused for the crime he committed. If the state obtains its financial rights through the debtor's obligation to pay, then ensuring that the state obtains its financial resources is achieved by compensating the state, and by deterrence, which is represented by the threat of punishment.

Additionally, the penalties for financial and economic crimes are not limited to monetary fines, and other penalties include imprisonment and confiscation, which are purely criminal and do not have the nature of civil compensation. The effect of conciliation extends to all of these penalties; therefore, this view struggles to justify the authorization of conciliation in such crimes. Hence, the assertion that the civil nature of the penalties prescribed for crimes

outlined in these laws justifies authorizing conciliation has become a contentious statement⁷¹.

Finally, after reviewing the different opinions in justifying the authorization of conciliation in economic and financial crimes, we find that the correct opinion revolves between two opinions:

- The first opinion, which is based on the idea of suitability, as there is no point in the measures taken and the effort, time and money expended in punishing those who express their willingness to address the effects of their crime and pay the state's dues, as what concerns the state in the first place is achieving its interest by obtaining all its financial dues.
- The second opinion is based on the civil nature of financial penalties imposed for economic crimes, viewing the state as a creditor that seeks to resolve its claims through amicable agreements with the debtor.

Conciliation in crimes impacting the economic and financial interests of the state is grounded in two main principles: the civil nature of the penalties imposed to safeguard these interests and the inadequacy of traditional punishments in meeting the needs of the public interest⁷².

The second section: The legitimacy of consensual justice in organizational crimes

Organizational crimes are those actions that the legislator considers crimes in certain circumstances, without there being an anomaly, deviation, or phenomenon behind them that requires a scientific study that focuses on the factors and causes, such as crimes that only express an assault on a specific system imposed by the state

It aims to achieve a public utilitarian goal, which is to reinforce the authority of laws enacted by the state to manage societal affairs and to ensure compliance with regulations designed to serve the public interest. The objective of employing this system in such crimes is to streamline penal procedures in many cases, thereby saving time, effort, and resources that would otherwise be expended if the accused were to face a trial and subsequent punishment.⁷³

Some also argue that this approach is justified by practical considerations, as it prevents the waste of time, effort, and

resources on minor cases, and this is especially relevant when the essence of the punishment is effectively fulfilled by the financial payment made by the accused⁷⁴.

In this regard, legal scholars contend that accepting a monetary settlement from the accused to resolve a criminal case without a trial is acceptable, and they argue that this approach might better serve the public interest compared to rigidly following traditional punishment procedures, especially since many of these offenses are punishable by fines⁷⁵.

The majority of jurists believed that suitability considerations are the basis for justifying the authorization of conciliation in organizational crimes, while saying that the basis for this is utilitarian considerations is a statement that has merit because accepting it means adopting this system in all organizational crimes, in which conciliation achieves an economy of money and effort, and time, regardless of the interest protected by the text on criminalization, this result cannot be accepted, and this is supported by the fact that the legislator aims, through criminalization, to achieve a public economic interest such as eliminating greed and monopoly⁷⁶.

It is certain that in cases of organizational crimes, if the accused chooses not to accept conciliation, this will not disadvantage him, as he has the option to reject it, and if declined, the standard criminal procedures will proceed against him, therefore, this system remains optional for the accused; he has the freedom to either accept or decline it⁷⁷.

Thus, the legitimacy of consensual justice in organizational crimes is grounded in considerations of practicality, and these considerations stem from the inadequacies of traditional punishment procedures, which are often slow, complex, and costly, imposing a burden on both the defendants and the legal system, and by contrast, resolving criminal cases through conciliation addresses these shortcomings, offering a more efficient solution that benefits both society and the accused.

In conclusion, the legitimacy of the consensual justice system, whether applied to crimes against individuals or those impacting the public interest, is grounded in practical considerations aimed at achieving public benefit. This system enhances efficiency by saving

time, effort, and resources, while also addressing the private interests of both victims and defendants by simplifying procedures and expediting resolution, and these factors have driven the evolution of criminal policy and the adoption of various forms of consensual justice as effective mechanisms for resolving public lawsuits.

Consensual justice is like a legislative license that the legislator has exclusive access to, through the criminal legislation that it has approved, and the Public Prosecution also has the authority to accuse and initiate a public lawsuit, and it is an essential party in the consensual justice system as the legitimate authority in the public lawsuit. Therefore, the state is entitled to decide against initiating a lawsuit based on considerations of practicality, which justify the adoption of the consensual justice system for certain crimes but not others, and the legislator holds the authority to determine when such a system is appropriate and warranted⁷⁸.

Conclusion:

Consensual justice is considered a pioneering model in which opponents -especially the victim- play a tangible role, in light of the voices calling for the establishment of effective criminal justice that is more considerate of the rights of litigants, in addition to the leading position of the victim, whether at the legislative or jurisprudential level.

The application of the consensual justice system relies on reaching a settlement between the accused and the victim, under the oversight and regulation of the judicial authorities, and this involves amicably determining the outcome of the criminal case and ensuring the implementation of the agreement, thus securing the victim's right to compensation.

Like any new and unconventional matter, the application of the consensual justice system in criminal matters has received severe criticism from some interested parties and researchers, despite the advantages it achieves, because they viewed it with strangeness, suspicion, and even accusation, as it represents a departure from some general postulates in criminal law, which do not. An effective and effective penal system can only be established if it takes it as the basis for all its legal rules, whether substantive or formal.

This research aims to clarify the legal framework of consensual justice, its legal nature, and the extent of its legitimacy in both crimes impacting individuals and those affecting the public interest.

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