
**Reconciliation in Criminal Law as a Procedural
Mechanism to Achieve Judicial
Individualization in Algerian Legislation**
الصلح في المادة الجزائية كآلية إجرائية لتحقيق
التفريد القضائي في التشريع الجزائري

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Abstract:

The study aims to shed light on the procedural framework of criminal reconciliation as an alternative means to resolve criminal disputes and to identify the legal aspects of its application mechanisms in Algerian criminal legislation. It also examines the challenges that arise during its implementation and proposes possible solutions to enhance the effectiveness of criminal reconciliation in reducing crime rates. This can be achieved by avoiding the delays in proceedings through a modern consensual approach based on simplified procedures that ensure swift justice, promote the status of the victim, rehabilitate the offender, and reintegrate them into society as productive and integrated individuals. Additionally, it works towards bridging the social divide, leading to the stability of human relationships beyond the confines of classical justice and ensuring a balance between providing opportunities for change and achieving justice.

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Keywords: Consensual approach, offender rehabilitation, Algerian criminal legislation, criminal reconciliation, alternative means.

ملخص:

تهدف الدراسة لتسليط الضوء على الإطار الإجرائي للصالح الجزائي كوسيلة بديلة لإنهاء الخصومة الجنائية، وتحديد الجوانب القانونية لآليات تطبيقه في التشريع الجزائي الجزائري، وكذا الوقوف على جملة الإشكالات التي تطرح عند تطبيقه مع اقتراح الحلول الممكنة لها حتى يكون للصالح الجزائي فعاليته في الحد من انتشار الجرائم، وذلك عن طريق تفادي إشكالية بطء سير الإجراءات من خلال اتباع أسلوب رضائي حديث يعتمد على إجراءات مبسطة تحقق عدالة سريعة وترمي إلى تعزيز مكانة الضحية وإصلاح المجرم وإعادةه إلى المجتمع كفرد منتج ومتكامل من جهة، وتعمل على رأب الصدع الاجتماعي من جهة أخرى ما سيؤدي حتما إلى استقرار العلاقات الإنسانية بعيدا عن مقتضيات العدالة الكلاسيكية، وضمان تحقيق التوازن بين إعطاء الفرصة للتغيير وتحقيق العدالة.

الكلمات المفتاحية: أسلوب رضائي، إصلاح المجرم، التشريع الجزائي الجزائري، الصالح الجزائي، وسيلة بديل.

I-Introduction:

The concept of criminal reconciliation lies in providing an opportunity for both the offender and the victim to reach an agreement that ends the criminal dispute through alternative means. The development and adoption of alternative methods for resolving criminal disputes have become an essential necessity in modern legal systems, given the limitations and overwhelming volume of cases within the traditional criminal justice system. These alternative methods have gained increasing attention from contemporary legal and judicial systems, as they offer significant advantages and effectively contribute to solving the problems caused by traditional criminal policies. The use of alternative means to resolve criminal disputes has become a crucial step in the development of modern justice systems.

The relationship between criminal litigation and state authority in matters of punishment is intertwined, making it difficult to argue that the concept of the state can achieve its right to punishment without resorting to judicial proceedings. Modern trends in punishment policy have led to significant procedural consequences. One such trend is the

concept of replacing precautionary measures with traditional penalties. State authority in punishment no longer means achieving punishment in the traditional sense of retribution but primarily focuses on rehabilitating the offender and reintegrating them into society as a productive and integrated individual.

However, the evolution that has affected the type of punishment and the methods of punitive treatment would not have been possible without the transformation that occurred in the philosophy and foundation of the right to punishment itself. This evolution resulted from the diversity and interchangeability of intellectual schools in the field of criminal studies. Criminal law strives to achieve security and stability in society by establishing criminalizing rules that prohibit behaviors that threaten harm or endanger its safety, while providing appropriate and proportional punishment for the committed offenses.

One of the most important alternatives that have been resorted to is criminal reconciliation, which involves reaching an agreement with the accused before prosecuting them. If the crime represents a point of conflict between the interests of the offender and the interests of society, reconciliation serves as a meeting point between the offender and the victim. Thus, a new concept of state authority in punishment has emerged, which can be achieved without resorting to public litigation and its complex procedures. The criminal reconciliation system has endowed criminal law with distinctiveness and independence that surpasses all branches of the law.

The importance of studying lies in its alignment with modern trends in the field of criminal justice. In the past, the focus was primarily on deterrence and punishment as the main means of addressing crimes. However, today we find that criminal justice policy primarily aims to reform the offender and provide an opportunity for their reintegration into society instead of simply depriving them of their freedom. This means avoiding the negative consequences of the traditional punitive system. Additionally, this approach also includes repairing the harm done to the victim and providing care for them after being overlooked for a long time, allowing the victim to participate in the decision-making process regarding the offender's punishment and express their wishes. This reflects an important shift towards enhancing the rights of victims and their active involvement in criminal justice processes.

Furthermore, the new approach to criminal justice promotes social peace by rebuilding human and social relationships between conflicting parties, enabling constructive dialogue and agreements without resorting to traditional punishments. This fosters understanding

**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

and reduces tensions in society, without denying the traditional purposes, as restorative justice focuses on minor offenses that do not require complex procedures or excessive penalties, while serious crimes and major cases remain subject to traditional criminal procedures and punishments commensurate with their severity, especially since their investigation is mandatory and involves two stages. This reflects a trend towards appropriately applying criminal justice according to the specific circumstances of each case.

This study aims to shed light on an important aspect of modern criminal justice that seeks to activate the principles of restorative justice in order to identify the legal aspects of restorative mechanisms, as well as to identify the challenges that arise when implementing them and propose possible solutions. It also aims to assess their effectiveness in reducing the number of criminal cases.

To gain a comprehensive understanding of the various aspects of the subject, the study adopts primarily an analytical approach to analyze various legal texts that specifically deal with the concept of restorative justice. Additionally, a descriptive method is used to unravel the depths of the provisions of restorative justice, the legal and jurisprudential issues it raises.

Given the importance of studying the mechanisms of restorative justice in putting an end to the criminal dispute, there are several challenges in its practical application, which raises a number of questions for investigation in this research. Some of the prominent questions and problematic issues are as follows:

The main problem of our research is formulated in the following key question:

To what extent is the procedure of restorative justice effective as an alternative method for resolving criminal disputes and achieving judicial individualization in Algerian criminal legislation?

The main research problem branches out into the following sub-questions:

- What is the concept of penal reconciliation?
- What are the different stages of the development of penal reconciliation in Algerian criminal legislation?
- What are the procedural provisions of the criminal legislation ?

To answer these questions, we have divided the topic into two main axes as required by the study. In the first axis, we address the

conceptual framework by defining penal reconciliation, its legal nature, stages of development, and characteristics. The second axis is dedicated to explaining the procedural provisions of penal reconciliation by highlighting its procedural requirements and effects.

I.1. The Conceptual Framework and Legal Basis of Penal Reconciliation in Algerian Legislation:

Penal reconciliation is considered one of the most important forms of restorative justice. It is a distinct method for resolving criminal disputes by resorting to agreement and consensus among all parties involved in the public prosecution to settle the criminal conflict, especially in minor offenses where only a fine is imposed. The legitimacy of the penal reconciliation system is derived from the law that allows the public prosecution to be settled through reconciliation (Makratarr, 2021-2022, p. 4).

Penal reconciliation is also considered one of the most important means of achieving restorative justice and a distinct method for resolving criminal disputes, apart from traditional criminal procedures and solutions. Its legitimacy in financial and economic crimes is derived from the legal system that determines their nature and effects. This has led most comparative legislations, including Algerian legislation, to utilize it to achieve certain practical considerations, such as reducing the backlog of cases before the courts, avoiding the problem of slow proceedings, and saving time, effort, and expenses for the accused, the victim, and the judiciary. Additionally, it helps reduce tensions and personal conflicts between individuals, contributing to the eradication of animosity and grudges that may arise as a result of traditional judicial decisions (Sanaa & Nahwi, 2021, pp. 212-200).

I.1.1 . Definition of Penal Reconciliation:

In this regard, we will highlight the general definition of reconciliation by specifying its linguistic and terminological definitions. Then, we will discuss its legitimacy in Islamic law, jurisprudence, and legislation, which we will address in the following elements.

I 1.1.1. Linguistic Definition of Penal Reconciliation:

"Salah" in Arabic refers to rectification or reform, such as improving something or rectifying a creature by treating it well. It also refers to the reconciliation of people among themselves, and it is also referred to as "peaceful reconciliation" (Khatu, 2016/2015, p. 11).

Reconciliation in Criminal Law as a Procedural Algerian Legislation Souad Mebarkia, Amina Bentaher

ملكان

In terms of language, reconciliation is defined as a noun derived from the trilateral root "Salh," which means reconciliation and agreement. It is the opposite of conflict and dispute. Reconciliation is defined as the act of making peace after a dispute. It signifies reconciliation and compromise, contrary to hostility and conflict. Reconciliation stands against corruption (Dabih & Haqas, 2017, pp. 735-736-745).

Reconciliation is the key to success in building a vibrant and prosperous society. It embodies values and principles that promote integrity and justice. Linguistically, reconciliation is defined as a noun derived from "al-musalahah," which means making peace after a dispute. The meaning of reconciliation is derived from "al-salih," which means rectifying or reforming something. It refers to removing corruption and making something beneficial or appropriate. It is said, "This thing is suitable for you (reconciliation) in a sound and righteous manner," which means it has been rectified and is now useful. It is also said, "He rectified (aslah) his work or his matter," meaning he brought what is beneficial and removed its corruption. It refers to resolving conflicts, hostility, and animosity between parties or entities (Makrattar, 2021-2022, p. 4).

I. 1.1.2. The terminological definition of criminal reconciliation:

There are many definitions of criminal reconciliation among legal scholars. Some define it as "a method of managing a lawsuit outside the framework of traditional criminal procedures." This legal approach has become necessary due to the significant challenges facing legal systems in dealing with the increase in criminal cases, which threatens to paralyze them and make it difficult to achieve social justice (Mahmoud Al-Mubaydin, 2005, p. M).

Dr. Ahsan Bosgui'a defines criminal reconciliation as "the settlement of a dispute through a procedure aimed at resolving disputes and ending them in a peaceful and mutually agreed manner" (Bosgui'a, 2005, p. 5).

Criminal reconciliation is also defined as "the transfer of a right or claim in order to resolve and settle disputes between conflicting parties. It implies reconciliation, agreement, or harmony, where individuals agree to cease hostilities and end the conflict. This is reflected in laws such as the National Reconciliation Law and the Civil Harmony Law in Algeria.

According to the Hanafi school of thought, it is "a contract used to resolve disputes and conflicts between individuals or different parties," while the Hanbalis define it as "a contract reached to reach an agreement between conflicting parties." The Maliki school of thought defines it as "the transfer of a right or claim to resolve or prevent a dispute or the fear of its occurrence." The Shafi'i school of thought defines it as "a contract that leads to the settlement of a dispute." All of these definitions are general and encompass both criminal reconciliation, civil reconciliation, and reconciliation in family and personal matters (The Impact of Criminal Reconciliation on the Course of Public Prosecution in Algerian Legislation, 2019, p. 6).

Some define reconciliation as "a contract by which the parties settle an existing or potential dispute through mutual concessions." Based on these aforementioned definitions, a concise definition of criminal reconciliation can be stated as "a peaceful and voluntary approach aimed at ending public prosecutions, characterized by flexibility and effectiveness in handling criminal cases to alleviate the burdens of litigation and avoid lengthy and complex proceedings" (Makrtar, 2021-2022, p. 7).

I.1.1.3. Definitions of Criminal Reconciliation in Comparative Legislations and Islamic Jurisprudence:

I.1.1.3.1. In French Legislation:

French legislation recognizes reconciliation as a means to terminate criminal proceedings under Article 3 of the Code of Criminal Procedure issued in 1958. However, the system of fine reconciliation was abolished by the law issued on January 3, 1972, and by Law No. 89/469 issued on July 10, 1989.

The French legislator allows, in some cases, resorting to reconciliation instead of imposing monetary penalties for certain offenses and crimes that involve fines as a means of punishment. This concept is applied to various aspects, including traffic offenses and crimes specified in the Forestry Law.

By virtue of the Criminal Settlement Law No. 2004/204 in France, the scope of criminal reconciliation has been expanded to include certain specified crimes. This law allows the public prosecutor to propose a settlement for defendants who have committed offenses classified as misdemeanors, punishable by a fine or imprisonment for a period not exceeding five years. The French legislator has prohibited reconciliation in misdemeanors related to the press, political offenses,

Reconciliation in Criminal Law as a Procedural Algerian Legislation Souad Mebarkia, Amina Bentaher

السلامة

and assault on public officials or those responsible for public service, as these crimes or acts pose a threat to public order and security (Boufateh, 2023, pp. 1001-1005-1019).

I.1.1.3.2. In Algerian Legislation:

The Code of Criminal Procedure stipulates in Article 6, paragraph 4, that reconciliation is considered one of the reasons for the expiry of public prosecution if expressly permitted by law. However, it should be noted that Algerian legislation has not defined criminal reconciliation explicitly. Reconciliation has been defined in civil law through Article 459, which states: "Reconciliation is a contract by which the parties settle an existing dispute or prevent a potential dispute by each party giving up their right in exchange" (Order No. 75/58, Civil Law, 1975).

I.1.1.3.3. In Moroccan Legislation:

By examining the Moroccan Criminal Procedure Code, especially Article 41, we note that the Moroccan legislator has adopted the system of criminal reconciliation as a modern means of settling criminal disputes. It can be used as an alternative to custodial sentences, under the jurisdiction of the public prosecutor, who has full authority in managing this reconciliation process, which should always be based on voluntariness without coercion or compulsion. Additionally, the Moroccan legislator allows for reconciliation in some cases, especially those where the punishment does not exceed two years of imprisonment and the financial fine does not exceed 5,000 Moroccan dirhams (Dzibeh & Hakkas, 2017, p. 738).

I.1.1.3.4. In Egyptian legislation:

The concept of criminal reconciliation in the Egyptian legal system is defined as a voluntary settlement reached between the parties involved in a criminal dispute, with the consent of the Public Prosecution, in order to extinguish the criminal charges and their legal effects. The reconciliation agreement should be approved by the competent judicial authority, taking into consideration the public interest and the rights of the victim. If the reconciliation is accepted and approved, the criminal proceedings against the accused will be terminated, and the reconciliation agreement will have the effect of a final judgment. (El-Nabi, 2019, p. 4226)

I.1.1.3.5. In Jordanian legislation:

The Jordanian legislator has not provided a specific definition for criminal reconciliation in contrast to civil reconciliation, which is defined in Article 647 of the Civil Law No. 43 of 1976 as "an agreement through which a dispute is settled and a conflict is ended by mutual consent between the reconciled parties." (Assalam, 2021)

However, the legal definition of criminal reconciliation may vary depending on the context and the legal system in which it is applied. It can be defined as "a waiver by the social entity of its right to punishment in some crimes in exchange for an agreement or reconciliation with the accused, in accordance with the provisions of the applicable laws."

Another definition could be "a procedure agreed upon between the state and the accused, or between the accused and the victim, to suspend criminal proceedings against the accused with the aim of resolving the dispute through a non-judicial process authorized by law, and its conditions are determined, whether this procedure involves compensation or not."

I.1.1.3.6. The position of Islamic jurisprudence on criminal reconciliation:

One of the justifications for maintaining criminal proceedings in Islamic law is criminal reconciliation. Islamic law allows for reconciliation as a means of resolving crimes committed against individuals, especially in cases involving bloodshed. Reconciliation replaces retribution, which is the prescribed punishment for such crimes, as blood money (diyah) serves as a substitute for retribution. (Al-Marshadi, 2023)

This is in accordance with the verse in the Quran that states, "O you who have believed, prescribed for you is legal retribution for those murdered" (Surah Al-Baqarah, verse 178), which highlights the importance of justice and retribution in cases of murder.

Allah also says, "And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]" (Surah Al-Isra, verse 33).

Furthermore, the Quran states, "And if two factions among the believers should fight, then make settlement between the two" (Surah Al-Hujurat, verse 9), which further supports the concept of reconciliation.

This indicates that we should strive diligently to resolve conflicts and differences through peaceful and lawful means. Muslims should be

**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

السلامة

a united nation and seek to achieve peace and harmony among themselves.

The preceding Quranic verses are the legal foundation regarding the issue of retribution as a punishment for murder. The second verse is evidence of the legitimacy of reconciliation as a reason for the dismissal of criminal claims, as Allah says, "... do not kill unlawfully" (Surah Al-Isra, Verse 33). This noble verse highlights the importance of reconciliation between disputing parties instead of resorting to litigation.

If an agreement is reached for reconciliation, and the guardian of the victim decides to waive their right to retribution, whether through blood money (diyah) or otherwise, and if time passes and the guardian forgives the offender, then according to this agreement, the punishment imposed by law on the killer is lifted. This legal ruling is agreed upon by all Muslim jurists and is supported by the saying of the Prophet Muhammad, peace be upon him, "Whoever kills intentionally is to be given to the guardians of the victim, and if they wish, they may kill him, and if they wish, they may accept blood money. Thirty rights, thirty compensations, and forty inheritances. If they agree to reconcile, then it is theirs." He also said, "Reconciliation is permissible among Muslims except for a reconciliation that makes the unlawful lawful or vice versa." It is worth mentioning that the punishment of retribution is indivisible, and it is not possible to fulfill retribution for some individuals without others.

Regarding the punishments in the context of Islamic penal laws, justice and equality must be achieved in society by strictly enforcing the prescribed punishments. This includes specific conditions for the dropping of the prescribed punishment in the case of crimes such as drinking alcohol. The following conditions must be met for the prescribed punishment to be dropped, and these conditions play a decisive role in determining the fate of the accused person. If a person repents for drinking alcohol before being caught, the prescribed punishment is dropped. However, if they repent after being caught, the judge may request forgiveness from the ruler or carry out the prescribed punishment against them.

As for the other prescribed punishments, they are not dropped by repentance or admission. The prescribed punishments are punishments for violating sacred rights that are connected to Allah, and therefore they cannot be waived or compromised. This includes punishments for adultery, homosexuality, false accusation of adultery, apostasy, highway robbery, and theft.

This is evidenced by a narration from the Prophet, peace be upon him, about Aisha, may Allah be pleased with her. The Quraysh were concerned about a prominent woman from the Makhzumi tribe who had committed theft, and they said, "Who will intercede for her with the Messenger of Allah, peace be upon him?" They said, "Who would dare to do so except Usama ibn Zaid, the beloved of the Messenger of Allah, peace be upon him?" So Usama spoke to him, and the Messenger of Allah, peace be upon him, said, "Are you interceding in a matter concerning the limits of Allah?" Then he got up and delivered a sermon, saying, "Those who were before you were destroyed because when a noble person among them stole, they let him go, but when a weak person stole, they punished him. By Allah, if Fatima, the daughter of Muhammad, were to steal, I would cut off her hand." (Al-Bukhari and Muslim)

This discourse highlights the importance of applying justice without discrimination in Islam, whether the actor is noble or weak, and it promotes the concept of justice and equality in the Islamic society.

I.1.2. The legal nature of penal reconciliation:

The legal nature of penal reconciliation is a subject that raises much debate among jurists and legislators. The characterization and adaptation of this reconciliation have varied with different legal systems that have regulated the issue of penal reconciliation. The legislative policy of states has played a significant role in determining the nature of this reconciliation, resulting in a variation in its legal nature.

The first opinion argues that penal reconciliation is merely an administrative procedure that imposes its effects according to the law. Advocates of this view believe that the authority of the state expires when an alternative penalty, such as payment of a sum of money or the relinquishment of seized property, is imposed. Supporters of this opinion argue that the expiration of the state's authority through punishment and the corresponding payment by the accused is nothing more than an obligation based on a public matter relating to the rights of society in general, rather than individual interests. Consequently, the disputing parties do not have the authority to determine the impact resulting from the reconciliation; rather, its effects are imposed according to the law and applicable regulations. Thus, this reconciliation represents a waiver by the social entity of its right to a criminal lawsuit in exchange for the conditions upon which the reconciliation is based, enforced by the power of the law. As a result, it is obligatory for the court to rule on the expiration of the criminal lawsuit. If the court neglects this and proceeds to adjudicate the lawsuit,

Reconciliation in Criminal Law as a Procedural Algerian Legislation Souad Mebarkia, Amina Bentaher

البيان

it must suspend the execution of the imposed penalty. (Suwayqat, 2017/2016, p. 50).

The second opinion considers penal reconciliation as "a legislative license granted by the legislator to the accused, whether they choose to use it or waive it." This view implies that penal reconciliation is an absolute right of the accused derived from the law, rather than an administrative procedural act as advocated by the proponents of the first opinion. According to this perspective, reconciliation can only occur if the accused accepts it. However, this does not mean that penal reconciliation can be characterized as a contractual agreement, as the authority here is legally bound to offer reconciliation to the accused.

The third opinion suggests that the legal nature of penal reconciliation is adapted as a consensual contract, similar to other contracts. This aspect of jurisprudence views penal reconciliation as a contract concluded between the authority on one side and the offender (the accused) on the other side. In the absence of specific legislation governing penal reconciliation, the rules of civil law can be applied. Dr. Amin Mustafa, citing the French jurist Professor Jean Pradel, supports this approach, where the latter suggests that administrative reconciliation with the offender is adapted as a civil contract subject to the provisions of French civil law. Proponents of this viewpoint argue that the contract of penal reconciliation is a consensual agreement concluded between the administration on one side and the accused on the other side, where the administrative party waives its request for a criminal lawsuit in exchange for the accused waiving their rights and guarantees in the investigation and trial process. Additionally, the reconciliation includes the payment of a monetary amount as compensation to the administrative party for the crime committed by the accused.

I.1.3.Evolution of Penal Reconciliation in Public Litigation in Algerian Legislation:

I.1.3.1.Phase of Approval of Reconciliation (from December 31, 1962, until June 17, 1975):

During this phase, the French laws that did not conflict with Algerian sovereignty continued to apply, in accordance with Law 62-157 dated December 31, 1962, which maintained the application of the previous French laws and legal systems as long as they did not conflict with Algerian sovereignty. July 5, 1973, was set as the deadline for the application of French laws (62/157, 1962). Thus, French criminal legislation became effective in Algeria, allowing for reconciliation in

public litigation, particularly in matters of customs, taxes, prices, forests, hunting, fishing, postal services, transportation, as well as traffic violations.

Furthermore, the Algerian Code of Criminal Procedure, issued on June 8, 1966, included reconciliation as one of the reasons for the expiration of public litigation in its Article 6. This provided additional legitimacy and significant importance to penal reconciliation. The Code of Criminal Procedure also included provisions that allowed for reconciliation in minor offenses that did not warrant imprisonment. These provisions can be found in Articles 381 to 391. Additionally, the law also allowed for discretionary fines in specific cases known as special offenses, according to Article 392.

During this period, the Finance Law for the year 1970 was also issued by Order No. 69-107, which officially allowed for reconciliation in embezzlement crimes (Al-Amal, 1969).

I.1.3.2.Phase of Prohibition of Reconciliation in Criminal Matters (from June 17, 1975, until March 4, 1986):

During this phase, significant amendments were made to the Code of Criminal Procedure by virtue of Order No. 75-46 dated June 17, 1975. Reconciliation was abolished as a reason for the expiration of public litigation, and the new law explicitly prohibited it. Article 6, paragraph 3, stated: "However, under no circumstances shall the case be dismissed through reconciliation" (Al-Jaza'iriya, 1966).

In light of this criminalization, the Customs Law was issued on July 21, 1979 (Customs, 1979). It was clear from the beginning that it did not include any provisions related to reconciliation. Over time, it became evident that finding an alternative to the reconciliation process was necessary due to its importance. Thus, the concept of administrative settlement emerged, which initially started as a distinct system and gradually evolved towards the concept of reconciliation.

When the Customs Law was issued, administrative settlement was a genuine administrative penalty. The law stipulated that for it to take place, the accused must pay "all financial penalties, costs, and customs obligations or others associated with the violation" (Article 265-2).

Administrative settlement was limited to the perpetrator of the crime and its impact was confined to the financial claim alone. The concept of administrative settlement witnessed significant development towards the concept of customs reconciliation. With the issuance of the

**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

المعاقبة

Financial Law for the year 1983, the legislator no longer required the offender to pay all financial penalties, indicating the possibility of reducing these penalties. Additionally, the scope of applying administrative settlement expanded to include any person pursued for committing a customs offense.

During this period, new Algerian legal texts were issued concerning areas where reconciliation was permissible under previous legislation.

Thus, the law related to prices was issued by Order No. 75-37 dated April 27, 1975, and Order No. 75-47 dated June 17, 1971, which was subsequently amended and completed to become part of the Penal Code. This amendment added the offense of monetary regulation to the provisions stipulated in the Penal Code, specifically in Articles 424 to 426.

In the same period, a series of other laws were issued, forming a comprehensive legal framework, including the Direct Tax Law (by virtue of the order dated December 9, 1976) (Direct Tax, 1976), the Indirect Tax Law (by virtue of the order dated December 9, 1976), the Hunting Law (by virtue of the law dated August 21, 1982, which was repealed by Law 14-08-2004), the Water Law (by virtue of the law dated July 16, 1983), and the Forest Law (by virtue of the law dated June 23, 1984).

While the legislator completely ignored the idea of reconciliation in this last category of laws and did not seek an alternative, in the fields of prices and monetary regulation, on the contrary, efforts were made to find alternative methods to ensure administrative settlements for offenses committed in violation of their provisions.

Thus, in Order No. 75-37 concerning prices, the legislator resorted to the system of *amende de composition* (fine of reconciliation), which is a borrowed term from criminal procedure law and is used to deal with minor violations, avoiding the use of the term "reconciliation" which was prohibited, even though the goal was the same, regardless of the terminology.

Paying the fine of reconciliation results in the termination of the public prosecution, even in cases where there is no explicit legal provision stating so. In Order No. 75-47 regarding the violation of monetary regulation, the legislator used the term "fine" to refer to reconciliation.

In this context, Article 425 bis 2 obligated qualified agents to inform the offender in cases where the gravity of the crime is equal to or less than 10,000 Algerian dinars (DZD) that they can pay, within 45 days, a fine equivalent to the legal value of the crime scene. Paying the mentioned fine within the specified period leads to the termination of the public prosecution. This can be inferred from the wording of paragraph 3 of Article 425 bis, despite the lack of explicit reference to this matter.

I.1.3.3.Reinstatement of Reconciliation Stage (from March 4, 1986, until today):

On March 4, 1986, Law No. 86-05 was issued as a supplement and amendment to the Code of Criminal Procedure, introducing significant amendments to the previous Article 6, which explicitly prohibited reconciliation in criminal matters. As a result of this amendment, reconciliation became permissible, as stated in the new text of Article 6 in its fourth paragraph, which reads as follows: "The public prosecution may also be terminated by reconciliation if explicitly permitted by the law."

In reality, the legislator did not wait for this amendment to allow reconciliation. A law was issued on December 26, 1985, allowing the Minister of Finance to reconcile with individuals pursued for possessing foreign currency balances convertible to domestic currency.

After some hesitation, reconciliation was included in the Customs Law under the Financial Law issued in 1992, dated December 18, 1992. Reconciliation replaced administrative settlement in Section Three, Paragraph B of Chapter Fifteen of the Customs Law, and the term "administrative settlement" was replaced with "reconciliation" in Article 265.

Then, the legislator authorized reconciliation in competition and pricing offenses under Order No. 95-06 dated January 25, 1995, concerning competition, particularly in Article 91. This was maintained in Law No. 04-02 dated June 23, 2004, which specifies the rules applicable to commercial practices, replacing Order 25-01-1995 (Article 60).

And this was based on Order No. 96-22 dated 9-7-1996, which relates to the suppression of violations of the legislation and regulations concerning foreign exchange and the movement of capital in and out of the country, as amended by Order No. 03-01 dated 19-02-2003, particularly Article 9 in its second paragraph. Finally, in 2006, the legislator authorized, by virtue of Law No. 06-23 dated 20-12-2006, amended and supplemented the Penal Code, the dropping of

Reconciliation in Criminal Law as a Procedural Algerian Legislation Souad Mebarkia, Amina Bentaher

السلامة

proceedings in several misdemeanors and offenses, including the following crimes: defamation (Article 298), slander (Article 299), violation of personal privacy (Article 303 bis), failure to surrender a minor (Article 329 bis), failure to pay alimony (Article 331), intentional assault and unintentional injury (Article 442).

I.1.4.Characteristics of penal reconciliation:

Penal reconciliation is characterized by several features, including the following: it is based on voluntariness, it is an alternative to traditional justice, and it is accompanied by a financial consideration.

I.1.4.1. Voluntariness as the basis of penal reconciliation:

Penal reconciliation is based on the principle of voluntariness as a fundamental principle for resolving criminal disputes between the disputing parties. It is not sufficient for the positive consent and acceptance of both parties, namely the accused and the victim, as well as the public prosecutor. Reconciliation allows for the termination of the public lawsuit without the intervention of the judicial authority, which is responsible for implementing the procedures and applying the punishment, i.e., the judicial authority that applies the law. (Qashoosh, 2020-2021, p. 54) Consequently, this principle enables the resolution of cases in a quick and efficient manner without lengthy legal procedures and costs.

I.1.4.2. Penal reconciliation is accompanied by a financial consideration:

Penal reconciliation, in principle, is a compensation paid by the offender to the victim in the form of optional compensation. The offender can agree to the act committed, either by acknowledging responsibility for the act or to avoid trial proceedings. Even if this is not the case, the Algerian legislator did not explicitly state a consideration for

reconciliation in Article 6/4 of the Code of Criminal Procedure.

However, this is explicitly provided for in several laws related to fees paid under the Customs Law, the Commercial Practices Law, and the Traffic Regulation Law, through Articles 118 to 120 of Law 01/14 concerning the regulation of traffic on roads, their safety, and security. (Boufateh, 2023, p. 1007)

I.1.4.3. Penal Reconciliation as an Alternative to Traditional Justice:

The main objective of criminal procedural law is to strike a balance between two interests: punishing the offender for their attack on societal security and order, and ensuring the rights of the accused to defend themselves and prove their innocence if not guilty. To achieve these two interests and strike a balance between them, criminal procedural law must possess three essential characteristics that enable it to fulfill its role effectively in confronting crime and uncovering the complete truth (Hazit, 2018, p. 5).

However, the emergence of legislative inflation, which in turn led to punitive inflation, necessitated dealing with modern legislation to address this crisis. Therefore, two main approaches emerged. The first approach is related to the objective aspect of criminal law and is known as the policy of decriminalization and reducing punishment. This entails removing the criminal status from certain low-risk criminal behaviors and including them within the scope of legality. On the other hand, the second approach is related to the procedural aspect and is known as the policy of procedural transformation. This approach aims to subject the accused to procedural treatment that differs from the traditional procedures of criminal trial, which are less complex and less decisive in criminal disputes.

We see that the modern direction of criminal policy aspires to find alternatives to public prosecution, seeking to resolve disputes between conflicting parties and conclude the public lawsuit through negotiated means. Penal reconciliation and penal orders are considered the first and most important mechanisms of restorative justice adopted by various legal systems to address the crisis of criminal justice. However, it does not stop at these two forms, as another form has been introduced, such as mediation, which has been adopted by many laws aiming to simplify legal procedures, activate criminal justice, and expedite the resolution of criminal cases (Belkacem, 2016/2017, p. 50).

I.2. Procedural provisions for criminal reconciliation in Algerian criminal legislation:

In this context, we will discuss the conditions and effects of criminal reconciliation:

I.2.1. Procedural conditions for criminal reconciliation:

Reconciliation in Criminal Law as a Procedural Algerian Legislation Souad Mebarkia, Amina Bentaher

ملكان

In general, criminal reconciliation is not allowed between the offender and the victim or the offender and the representative of the public prosecutor's office in criminal cases. This leads to the termination of criminal proceedings and the complete and final exemption of the offender from punishment.

However, there are certain exceptions to this rule, and one exception to the aforementioned principle is the possibility of terminating criminal proceedings in some crimes where the prosecution is based on a complaint from the victim. Examples of such crimes include adultery, abandoning the family home, etc. On the other hand, the Algerian legislator has allowed, in the last paragraph of Article 06 of the amended and supplemented Algerian Code of Criminal Procedure, that public prosecution can be terminated through reconciliation if explicitly permitted by law. Indeed, several legislative texts have emerged that regulate specific crimes and explicitly allow for reconciliation.

Reconciliation is considered an exceptional procedure in Algerian law, as the Algerian legislator has imposed a set of restrictions on it. It has established objective and procedural conditions, as well as conditions related to the parties involved in the reconciliation. In order to ensure that the effects of reconciliation are relative, the Algerian legislator has allowed reconciliation in various forms of embezzlement crimes, in accordance with Article 09 of Order No. 96-22, as

amended and supplemented, unless the offender is a repeat offender (Article 10 of Order No. 96-22). Furthermore, Article 09 repeated of Order No. 03-01 has made reconciliation permissible in contract cases as well, and it referred the procedure for reconciliation to the regulations that specify its conditions and procedures.

We will focus on the procedural conditions for reconciliation, which are as follows:

I.2.1.1. Request for reconciliation from the offender:

The request should be made by the original perpetrator, the accomplice, guardian, or legal representative in crimes against persons, or by the customs agent or the beneficiary of the crime. The applicant must be a person with standing, and the status of the offender should be taken into account, as it affects the willingness of the authority to whom the reconciliation request is submitted (Makertar, 2021-2022, p. 22).

It is advisable for the request to be in writing, even though there is no legal requirement for it to be oral or written. The default is for it to be written because the written form enhances transparency and is more suitable in cases where reconciliation is subject to the opinion of the national committee or local reconciliation committees. Moreover, the request should include an explicit expression of the applicant's intention to reconcile. It is recommended that the request also include suggestions regarding the amount to be reconciled. In cases where reconciliation is subject to the opinion of the national or local committee, subscription is required. This is stated in Article 05 of Executive Decree No. 99-195, which establishes the reconciliation committees, their formation, and procedures. Additionally, the request can also be submitted to the competent authority before filing a lawsuit. In this case, the public prosecutor's office orders the preservation of the case files and decides not to proceed with the case. If the request is made after the filing of the lawsuit, the public prosecutor's office orders the termination of the public prosecution through reconciliation. Reconciliation can also be conducted after a final judgment has been issued, but this requires specific conditions. In this case, the effect of reconciliation is limited to financial penalties in economic crimes, without affecting criminal penalties such as imprisonment and fines in the case of applying mitigating circumstances (Algerian law).

I.2.1.2.The form of the request for criminal reconciliation and its deadline:

Originally, the request should be in writing, but Decree No. 11-35 does not explicitly impose writing as a basic condition for submitting the request. According to this decree, there is no need to use a specific format or phrase in the request. It is sufficient for the request to include an explicit expression of the applicant's intention to engage in the reconciliation process.

In addition, there are other conditions that must be met with the request. The request must be accompanied by a receipt for the mentioned guarantee deposit in Article 03 of the decree. A copy of the criminal record of the offender must also be provided, and it should be submitted to either the President of the National Reconciliation Committee or the President of the Local Reconciliation Committee, and personally by the offender if they are a natural person, and by their legal representative if the offender is a legal entity, according to Article 02(4) and 02 of Decree No. 11-35.

As for the deadline for submitting the request, the legislator did not specify a specific deadline for submitting the request, but it can be

**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

ملكان

inferred from the provision of repeated Article 09 of Order No. 96-22, as amended, which states that: "In the event that reconciliation is not conducted within a period of three (03) months from the date of inspecting the violation, the file of the proceedings, supported by the complaint (complaint to the Minister of Finance or the Governor of the Bank of Algeria or one of their qualified representatives for this purpose), shall be sent to the competent regional public prosecutor, and the offender must submit their request for reconciliation within a maximum period of three (03) months from the date of inspecting the violation.

The question arises about the fate of the request if it is submitted after the expiration of the three (03) months period from the date of inspecting the violation. Will this request be accepted or rejected ?

If the repeated Article 09 of Order No. 96-22, as amended by Order No. 03-01 (2003, 1996), stipulates that reconciliation must be conducted within a period of three (03) months from the date of inspecting the violation, in our opinion, this does not prevent reconciliation from taking place after the mentioned deadline, even after the initiation of judicial proceedings until the judgment becomes final, as indicated by the last paragraph of the same amended Article 09, which allows reconciliation at any stage of the lawsuit until a final judicial judgment is issued.

Moreover, we question the usefulness of retaining in the text of the repeated Article 09 the paragraph that sets a deadline for reconciliation in light of the new paragraph that allows reconciliation even after the initiation of proceedings until a final judicial judgment is issued.

It's worth noting that even before amending the text of Article 09 of Order No. 96-22 (1417, 1996), the Supreme Court had issued a decision on 25/01/1999 stating that the failure to comply with the three (03) month deadline for sending the report to the competent regional public prosecutor for further action does not render it invalid.

Regarding Decree No. 10-03 in Algerian law, the issue of determining the necessary deadline for submitting a request for reconciliation has been corrected. According to Article 09 repeated 02 of Decree No. 96-22, as amended and supplemented by Decree No. 10-03, anyone who commits a violation of the legislation and regulations concerning the movement of capital in and out of the country can request reconciliation within a maximum period of thirty (30) days from the date of detecting the violation.

The reconciliation committee must decide on the request within a maximum period of sixty (60) days from the date of notification.

In cases not provided for in Article 09 repeated 1 of Decree No. 10-03, the violator may request reconciliation within a maximum period of thirty (30) days from the date of detection of the violation, and the reconciliation

committee must decide on the violator's request within a period not exceeding sixty (60) days from the date of notification.

I.2.1.3. The competent authority to whom the request is submitted and its approval shall be as follows:

- In the first case, if the case is still in the stage of collecting evidence or preliminary investigation, the public prosecutor is responsible for initiating and prosecuting the criminal case, except in cases where the complaint, authorization, or request restricts this. The public prosecutor, his assistants, the deputy prosecutor, or the judges, whether they are the judges of the case or the investigating judges, represent the public prosecution in the reconciliation process.

- In the second case, if the reconciliation takes place after the initiation of the public prosecution, the request for reconciliation is submitted to the court to prove the reconciliation. This can be done if the aggrieved party was unaware of their rights or for other reasons. The beneficiary of the reconciliation can request the judge to prove the reconciliation in any case that the lawsuit is in, provided that no final judgment has been issued in it. The request for reconciliation can also be made before the second and third degrees if necessary.

- The third case concerns customs reconciliation, and it is represented by the General Director, the regional supervisors, the heads of inspection departments, etc. According to the decision of the Minister of Finance No. 99-06, which specifies the jurisdiction of customs administration officials in granting reconciliation according to the nature of the customs offense and the amount of duties and fees payable. After reviewing the file by the national or local committee, the responsible official issues the reconciliation decision, which determines the amount of reconciliation and notifies the applicant within 15 days.

This decision also includes the conditions for reconciliation as stipulated in Article 383 of the Algerian Penal Code. In case the request is erroneously sent to the wrong authority, that authority must refer the case to the competent department to take the necessary actions.

- The fourth case pertains to exchange offenses, and the competent authority in this case is the local committee's chairman if the value of the offense is equal to or less than 500,000.00 DZD, or if the violation is unrelated to foreign trade operations. The committee members are summoned by the chairman, and the files are reviewed at least 10 days before the meeting. The committee's decisions are made by a majority vote, and a copy of the reconciliation decision is sent to the Minister of Finance to take the necessary actions.

- In the fifth case, relating to competition and price offenses, if the fine amount prescribed for the violation exceeds 300,000.00 DZD or is equal to 500,000.00 DZD, the competent authority is the Minister of Trade, who issues a decision granting reconciliation or settlement, specifying the amount to be paid, the deadlines, and the entity responsible for collection, which is the Treasury.

The penal reconciliation is not a right for the offender, and it is not considered a mandatory preliminary procedure for the administration to follow before bringing the case to court. Rather, it is a method authorized by the legislator for the administration to grant when requested by eligible individuals under specified conditions through regulations (El-Hakim, 2005, p. 261).

I.3.The effects of penal reconciliation:

The effects of penal reconciliation differ in Algerian criminal legislation depending on the parties involved. For a reconciliation to take place, there must be a dispute between two parties: one being a person who committed a violation, and the other being a party willing to reconcile. Both parties aim to achieve the same goal, which is to avoid presenting the dispute to the judiciary. The realization of this goal depends on the position and interests of each party, leading to varying effects resulting from this procedure for each party (Makrtar, 2021-2022, p. 46).

The effects of penal reconciliation include important points related to the expiration or establishment of public prosecution and the effects of reconciliation for third parties.

I.3.1. Effect of expiration or establishment:

I.3.1.1. Effect of expiration:

Article 09 repeated of Decree No. 96-22, as amended and supplemented by Decree No. 03-01, explicitly states that public prosecution can end with reconciliation between the parties, whether

reconciliation takes place before the start of judicial proceedings, during proceedings, or even after the issuance of a judicial judgment, provided that the judgment does not have the force of *res judicata*.

- If reconciliation occurs before referring the file to the public prosecutor: The file is preserved at the relevant administrative level.

- If reconciliation occurs after notifying the public prosecutor: The situation varies depending on the stage reached in the proceedings (Ltarch and Abd El-Hak Nasser, 2022-2021, p. 80).

At the level of the public prosecutor's office, if no action has been taken, the public prosecution is suspended upon reconciliation, and the file is preserved at the public prosecutor's office. However, if the public prosecutor has

taken action in the case, either by initiating an investigation or referring it to the court, the jurisdiction to take appropriate measures will be transferred to one of these two entities.

If the case is presented before an investigating judge or a chamber of indictment, the competent authority issues a decision stating that there is no basis for prosecution due to the reconciliation reached between the conflicting parties. In the case where the accused is under pretrial detention, the competent authority in this context must release them immediately upon reconciliation, in implementation of the reconciliation agreement and based on the applicable legal procedures.

If the case is presented before the court of judgment, it is obligated to declare the public action as terminated as a result of the reconciliation reached between the parties.

If the case is presented before the Supreme Court, it should issue a statement announcing the rejection of the appeal raised due to the reconciliation, after verifying its occurrence.

I.3.1.1.1. The Effect of Reconciliation:

According to Article 381 of the Code of Criminal Procedure, the amount of reconciliation is determined for committed offenses in a way that is equal to the minimum limit of the penalty prescribed by law for this offense. This includes offenses that allow for the application of discretionary fines according to Article 392 of the same law and the effect of reconciliation in traffic violations, (01-04, 2001).

The Algerian legislator did not precisely determine the amount of reconciliation, and factors such as the gravity and seriousness of the crime, the damages that may result from it, and the financial situation

**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

البيان

of the offender and their criminal record should be taken into account when determining this amount.

Under this system, the amount of reconciliation for the complete offense can be estimated to range between the minimum limit and at least half of the fine prescribed by law for this offense, based on the circumstances surrounding the case and the aforementioned factors (Mekretar, 2021-2022, page 58).

Referring to Executive Decree No. 03-111, which specifies the conditions for conducting reconciliation in the field of foreign exchange violations and the movement of capital in and out of the country, we find that Article 4 of it specifies the amount as follows:

a- First Case:

If the value of the offense is less than 20,000.00 DZD, the amount of reconciliation varies according to the legal nature of the offender of the offense. If the offender is a natural person, the amount of reconciliation will range between double and quadruple the value of the offense. As for legal persons, the amount of reconciliation will range, according to the value of the offense, between four and seven times the value of the offense.

b- Second Case:

If the value of the offense is equal to or exceeds 20,000.00 DZD, the amount of reconciliation must be considered based on the type of offender of the offense. If the offender is a natural person, the amount of reconciliation should not be less than double the value of the offense. If the offender is a legal person, the amount of reconciliation should not be less than four times the value of the offense. The reconciliation decision includes the amount to be paid and its deadlines. Order No. 30-10, in Article 9 bis, stipulated that: "The offender shall not benefit from the reconciliation procedures in the following cases:

- If the value of the offense exceeds 20,000.00 DZD.
- If reconciliation has been previously used.
- If the offense of foreign exchange is associated with the crime of money laundering or financing terrorism.

Referring to Law No. 04-02, we find that the Algerian legislator did not precisely determine how to determine the amount of reconciliation, but provided a guiding framework for this process and left the administration with a margin of freedom in determining it. The

authority to do so was given to both the Minister responsible for trade and the provincial director within the limits of their jurisdiction, (Year, 23-6-2004, and 14-8-2004, 2004), with the reconciliation amount being limited between the minimum and maximum limits prescribed as a penalty for the relevant offense (Ahsan, 2013, page 212).

I.3.1.1.2. Effects of Reconciliation on Third Parties:

General rules state that the effects of a contract may be limited to the contracting parties without extending to non-participating parties. These general rules also apply to the effects of customs reconciliation on third parties. Non-parties do not benefit from it and may be harmed by it.

Third parties in the context of customs reconciliation refer to other actors, partners, and civil liability guarantors because the effects of customs reconciliation are limited to the party that reconciled with the customs administration. These effects do not extend to other individuals who were involved in the same customs violation.

II – Conclusion:

With the explanation of the concept of criminal reconciliation and the clarification of its legal nature and effects, followed by an examination of the position of comparative legislations towards criminal reconciliation, it becomes evident that the concept of criminal reconciliation is a relative matter that varies according to the legal system of each country. What may be valid for criminal reconciliation in one country may not be valid in another, as there may be significant differences between countries regarding the organization and implementation of criminal reconciliation and its effects. However, those who follow the legislative policy development of countries will quickly discover that the principle of criminal reconciliation is still evolving and has not yet solidified on fixed foundations. Nonetheless, this does not mean that these foundations are unclear, as evidenced by the previous explanations in this research.

Criminal reconciliation, in one way or another, has started to revolve towards one direction, which is the substitution of imprisonment with alternative penalties. This reflects a significant development in criminal and legal philosophy, as criminal reconciliation now means that the offender can avoid the negative consequences of imprisonment and, as a result, can avoid the negative effects of imprisonment on both the offender and the state in all its aspects. It cannot be denied that countries are under pressure to reduce the percentage of custodial sentences by developing alternative

**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

ملكان

penalties that aim to correct the behavior of the offender and achieve justice in a better way, as custodial sentences have proven to be ineffective in reducing the crime rate in society. On the contrary, they have had a reverse effect on the behavior of the prisoner, leading to an increase in deviant behavior. Additionally, imprisonment ultimately imposes a costly burden on the state and drains its resources. Therefore, the concept of alternative penalties has gained prominence in legal thinking, playing a significant role in shaping the future of criminal policy, to the extent that it has found its place in criminal legislation in many countries.

Criminal reconciliation is an alternative penalty that achieves the concept of social deterrence, imposes punishment on the criminal, satisfies the public's sense of justice, and, finally, has the ability to prove its effectiveness in reducing the spread of crimes through studies and practical examples. These demonstrate the effectiveness of the principle of reconciliation in reducing crime rates and reintegrating offenders into society. Based on these justifications, this study recommends adopting the principle of criminal reconciliation as an authentic principle in the fundamentals of criminal procedures, to be generalized without being limited to specific types of crimes, provided that it does not reach a point that leads to the dismissal of criminal cases involving the rights of others or the reconciliation in serious crimes that rise to the level of felonies. Consequently, the principle of criminal reconciliation can be widely applied concerning violations and misdemeanors, meeting the needs of justice and society as a whole.

Based on everything we have discussed regarding criminal reconciliation and its importance in the legal system, our study has led to the following suggestions that can contribute to the development of an advanced criminal policy that targets criminal reconciliation from multiple aspects:

1. Despite the fact that the terms "reconciliation" and "settlement" are used interchangeably in many contexts, it is necessary for the legislator to clarify the differences between them. Understanding the distinction between these concepts will enable lawyers, judges, and individuals alike to deal with reconciliation and settlement-related cases accurately and fairly.
2. The legislator should consider expanding the scope of criminal reconciliation concerning regulatory violations, particularly traffic violations. This expansion would help achieve more effectiveness in dealing with these issues and alleviate the burden on the judicial system. Expanding the scope of criminal reconciliation in this context can

contribute to improving the efficient administration and implementation of criminal justice by providing a quick and appropriate solution for all parties involved.

3. The study also recommends not limiting the scope of compensation in criminal reconciliation solely to financial compensation or fines. The principle of criminal reconciliation represents an important legal tool in addressing violations and misdemeanors, and its goal should be to achieve a deterrent punishment that prevents the offender from repeating the crime. Therefore, the scope of compensation should be expanded to include other forms of restitution that serve this objective. Instead of restricting it to financial compensation, other options could be included, such as providing social services or requiring the offender to attend educational courses or therapy sessions that may prevent them from repeating the crime. This approach enhances the understanding of criminal reconciliation as a tool to address crimes by addressing the causes and factors that led to the commission of the offense, rather than merely concealing the outcomes.

Criminal reconciliation is indeed a golden opportunity for individuals who have deviated from the right path in their lives and committed mistakes against society. It is an opportunity for them to rehabilitate themselves and a chance to avoid being sentenced. However, this does not mean that this opportunity remains available to the extent that it becomes leniency towards criminal behavior or an encouragement for it. The key to preventing that lies in the strict application of laws without the possibility of resorting to criminal reconciliation. This ensures that justice is achieved and that crime is not encouraged in any form, while maintaining a balance between giving an opportunity for change and achieving justice.

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**Reconciliation in Criminal Law as a Procedural Algerian
Legislation Souad Mebarkia, Amina Bentaher**

ملحوظات

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