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Law No.25-14 and Restorative Justice

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Abstract:
The field of criminal justice plays a pivotal role in preserving the fundamental components of society, and the criminal judiciary constantly seeks to enforce punishment upon the accused perpetrator of a criminalized act. However, social and scientific evolution has led to an intellectual enlightenment, advocating for a restorative justice approach that is less severe than deterrent justice. This approach has been remarkably enshrined in the new Criminal Procedure Code, Law No. 25-14, which embraces a reformative trend more prominently than the repealed law.
The new law expands upon previously established mechanisms, such as criminal mediation, while introducing new, reformative judicial prosecution procedures. Concurrently, these measures alleviate the burden on the judiciary, thereby fostering a more efficient judicial environment. Ultimately, the legislative development of criminal justice profoundly serves the social dimension of the legal rule, as the Algerian legislator adopts novel methods in criminal prosecution and trial, applicable to both natural and legal persons.
Keywords: Penal mediation, punishment, moral person, criminal justice, follow-up adjudication.

Introduction:

The contemporary punitive system has witnessed a radical transformation from retributive justice, which focuses on inflicting pain upon the offender, to "restorative justice," which aims to repair the harm and restore social balance. Within this context, **Law No. 25-14** [1], amending and supplementing the Criminal Procedure Code, emerged to revolutionize Algerian criminal policy by adopting "consensual justice" mechanisms. The significance of this law lies in its endeavor to

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reduce reliance on custodial sentences, activate the victim's role, and safeguard economic entities by introducing the deferred prosecution system for legal persons.

Indeed, the state's exercise of its punitive authority has at times come to constitute an infringement on individual rights and freedoms under the guise of protecting society and social values, rendering current criminal policy conflicting with the principle of safeguarding liberties. This has necessitated a resort to alternative mechanisms capable of guaranteeing these rights and freedoms. To this end, the legislator initiated new procedures to reform and strengthen the justice system—particularly the public prosecution—by granting it novel mechanisms to manage and adjudicate public actions in cases of pretrial guilty pleas. Consequently, cases are not referred to the misdemeanors court, thereby alleviating pressure and reducing the accumulation of non-serious cases before the trial judge.

The importance of this study lies in the practical dimension of criminal justice, both in terms of criminal prosecution and reform. This shift has become an imperative necessity resulting from scientific evolution and increasing social awareness, which prompted the legislator to reconsider the severity of deterrence within Algerian criminal law. Accordingly, new methods and procedures have been introduced, significantly altering the judicial path for both natural and legal persons, ultimately fostering greater stability and ease within the economic sphere.

Based on the foregoing, the following research problem arises: "What are the efforts of the Algerian legislator in implementing restorative criminal justice for legal entities?"

To answer this research problem, the study will be divided into two main sections:

- **Section I:** Restorative Justice for Natural Persons.
- **Section II:** Restorative Justice for Legal Entities.

1. Criminal Justice for Natural Persons

Law No. 25-14 has introduced expanded and novel methods regarding the prosecution of natural persons for committed criminalized acts. This was achieved by adopting restorative justice in accordance with the social and practical necessities of judicial work, particularly concerning the Public Prosecution upon receiving files from the judicial police or processing complaints. To analyze this subject, penal mediation and the immediate appearance system (procédures de comparution immédiate) will be examined.

1.1. Penal Mediation

Penal mediation is considered an effective mechanism in criminal prosecution. When pursued, the criminal prosecution is suspended, and the situation is rectified without scheduling a formal court case. Conversely, in the absence of mediation, the offender would face a custodial sentence, a fine, or both, whereas such penalties are avoided when mediation is utilized.

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1.1.1. Characteristics of Penal Mediation

Penal mediation possesses several characteristics, notably functioning as a social measure and an alternative procedure to criminal prosecution.

A. Mediation as an Alternative Measure to Punishment: Scholars and experts in criminal policy have advocated for the institutionalization of mediation within criminal policy as an alternative mechanism to criminal prosecution. It embodies the principle of expediency (discretionary prosecution) and serves criminal law by aiming to repair harm and restore the status quo through mutual consent [1].

It has become imperative for the Criminal Procedure Code to achieve the objective of individualizing punishment at the Public Prosecution level rather than solely within the trial courts. This is accomplished by expanding the discretionary power of the Public Prosecution. Consequently, the representative of the Public Prosecution utilizes the principle of expediency—enjoyed as an inherent authority—for various reasons that predominantly serve the public interest, whereby they waive the public action ...and excludes it in certain simple and non-serious crimes, where traditional punishment would be purely retributive and more detrimental to society than reformative, thus opting for restitution by the offender and the acceptance of this settlement by the victim [1].

In restorative justice, the principle of expediency is broader than before, as it involves the victim in order to obtain material compensation, which is more significant to the aggrieved party than the criminal prosecution of the offender. Since the state and society are not considered direct victims of the offender's behavior in certain crimes—which the legislator has exclusively designated for mediation—the victim is granted the freedom to assess the compensation for the harm suffered due to the offender's act.

B. Penal Mediation as a Social Measure: Some researchers in the field of criminology and punishment argue that penal mediation cannot be fully understood without studying the social environment, particularly individual behavior and the prevailing ideological dimensions within society. This study is essential to explore alternative methods to punishment and prosecution, and to establish a compatible social response to resolve disputes without judicial intervention. The social dimension cannot be overlooked in reaching a settlement that satisfies all parties. Furthermore, despite the rising crime rates in societies, the offenses covered by mediation have become conventional, everyday crimes [2].

The exacerbation of these crimes is primarily attributed to the failure of the traditional punitive system to address such cases and put an effective end to them, given the judiciary's inability to handle this volume of offenses in terms of swift adjudication, alongside the heavy burden placed on penal institutions. This necessitates the intensification of crime prevention efforts by implementing broad reforms within the judicial system and engaging society in crime control. This

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contrasts with the varied judicial systems of countries that transitioned through judicial mediation until the legislator institutionalized it within criminal law, owing to its efficacy and conviction in its outcomes after implementation, and its ability to counter crime compared to traditional procedures. Advocates of penal mediation support their views through comparative studies of major criminal legal systems, particularly when the cultural controls of societies fell within the jurisdiction of the French judiciary, which was a pioneer in enshrining the penal mediation system within its legislative framework [3].

1. Penal Mediation and Conciliation

There is a substantial linguistic and terminological overlap between mediation and conciliation in criminal matters, as both aim to settle disputes, thereby terminating criminal prosecution and extinguishing the public action upon implementation. However, the Algerian legislator, through the Criminal Procedure Code, has explicitly reaffirmed the distinct and independent nature of penal mediation as an autonomous legal system. This distinction is clearly reflected in Article 9 of Law No. 25-14, which states that the public action is extinguished "by the implementation of the mediation agreement" and "by conciliation where the law expressly permits it." Consequently, this statutory provision confirms that fulfilling mediation obligations constitutes an independent ground for the extinguishment of public action.

Penal mediation possesses unique procedural features and independent legal effects, whereby its execution is entrusted to the Republican Prosecutor pursuant to Articles 59 to 68 of the Criminal Procedure Code, which govern the statutory framework of penal mediation. In contrast, the repealed Law No. 15-02 regulated it under Articles 37 bis in a manner that was less flexible and reform-oriented than the current framework [1].

Mediation constitutes a hybrid mechanism that merges the Public Prosecution's principle of expediency with the suspension of criminal prosecution. It paves the way for a negotiated justice centered on mutual consent and equitable, easily assessable restitution. This eliminates the need for preliminary judgments ordering expert appointments, which typically prolong trial durations. Consequently, these traditional judicial decrees are excluded from mediation-eligible offenses, allowing the Public Prosecution to manage the procedure comprehensively and definitively, achieving a resolution that satisfies all disputing parties entirely outside the courtroom environment [2].

1.1.3. Mediation Procedures

Article 59 of the Criminal Procedure Code stipulates:

"Prior to any criminal prosecution, the Republican Prosecutor may, either on his own initiative or upon the request of the victim or the suspect, decide to conduct a mediation procedure when it is likely to put an end to the disturbance resulting from the crime or to repair the harm caused by it."

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"Mediation shall be conducted pursuant to a written agreement between the perpetrator of the criminalized acts and the victim, and in the presence of their legal representative if the victim is a child."
"The Republican Prosecutor shall personally undertake the mediation procedure or delegate a certified mediator to do so. In the latter case, the delegated mediator must submit the mediation minutes to the Republican Prosecutor for approval and endorsement."
"Delegated mediators shall take the oath before the Judicial Council within whose jurisdiction they are appointed for the first time, in accordance with the following formula: *'I swear by Almighty God to perform my duties to the best of my ability, and to maintain the confidentiality of the information I become privy to during or on the occasion of the performance of my duties.'*"
"In all cases, mediation shall take place at the court headquarters."
"The conditions for selecting delegated mediators, the modalities of their appointment, as well as their status and compensation system, shall be determined by regulation" [3].
It is evident from the text of the aforementioned article that penal mediation can be initiated by the Republican Prosecutor, the victim, or the suspect.
A. Penal Mediation Initiated by the Public Prosecution: The Public Prosecution holds the authority to represent the public interest, initiate, and conduct public action through the Prosecutor General. However, regarding certain criminalized acts, individual interests outweigh the public interest due to various considerations, such as family cohesion. These considerations restrict the Republican Prosecutor's authority to initiate public action, conditioning it upon a formal complaint by the concerned or aggrieved party.
Despite these restrictions, the Public Prosecution enjoys the principle of expediency, which serves as a strategic prerogative utilized to terminate criminal prosecution and resolve disputes while safeguarding the public interest. This is evidenced by the term "may" used in Article 59 of Law No. 25-14, which denotes discretionary authority rather than an obligation. Thus, the Prosecutor may decline to pursue mediation in the first instance, even if requested by the parties; furthermore, no dispute can be submitted to a mediation procedure without the prior approval of the Republican Prosecutor [4].
Regarding juvenile misdemeanors, Law No. 15-12 relating to child protection states that: "The competent Republican Prosecutor may conduct mediation procedures in accordance with Article 110 th The Republican Prosecutor shall retain jurisdiction to conduct mediation at any time prior to the initiation of public action. Meanwhile, Article 111 of Law No. 15-12 stipulates that the Republican Prosecutor may conduct the mediation personally, through an assistant, or via delegated mediators [1].
B. Penal Mediation Initiated by the Victim: The victim, whether directly or indirectly aggrieved by the crime, may request the Public Prosecution to initiate mediation, focusing on the civil or

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financial remedies. This request can be made even after the public action has been set in motion, provided that their status as an aggrieved party is established. This status is granted exclusively to individuals who have suffered actual harm arising from the crime. Consequently, by argument of implication (*a contrario*), no individual who has not sustained harm from the offense may request mediation; thus, it is strictly the victim who must initiate the request regarding the damage resulting from the crime.

The law explicitly permits the victim to request mediation from the Public Prosecution regarding a criminalized act that caused them direct or indirect harm, provided that the offense falls within the statutory scope of mediation; otherwise, the request shall be rejected for lack of legality [2].

C. Penal Mediation Initiated by the Suspect: The suspect (the complained-against party) is defined as "any individual against whom the victim has filed a complaint, attributing a criminal act to them. This term may overlap with 'suspect' (*le suspect*), against whom conclusive evidence of committing the criminal act has not yet been established."

Mediation is concluded pursuant to a written agreement between the victim and the suspect, which is signed, endorsed by the Public Prosecution, and officially filed. The penal mediation minutes possess a binding probative force that bars the victim from filing a subsequent complaint regarding the same acts, on the grounds that the criminal prosecution has been stayed and the public action has been extinguished.

Furthermore, a juvenile offender or their legal representative may request mediation for the purpose of suspending prosecution, concluded between the juvenile and the victim or their legal representative, in the presence of the Public Prosecution.

1.1.4. Offenses Subject to Penal Mediation

Penal mediation is applied primarily to misdemeanors, as well as infractions (petty offenses). Article 61 of Law No. 25-14 stipulates the following:

"Mediation may be applied in misdemeanor matters to crimes of insult, defamation, infringement on private life, breach of trust, threat, malicious denunciation, intentional failure to pay alimony, non-delivery of a child, fraudulent misappropriation of the whole or part of an inheritance, shared properties, or corporate funds, issuing a check without sufficient funds, vandalism, theft, concealment, fraud involving relatives and in-laws up to the fourth degree, intentional destruction of third-party property, involuntary assault misdemeanors, and willful assault committed without premeditation, lying in wait, or the use of a weapon, trespassing on real estate, agricultural crops, grazing on another's property, and fraudulent consumption of food or beverages or deceitful benefit from other services.

Mediation may also be applied to infractions" [1].

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It is evident from the text of the aforementioned article that the legislator has expanded the scope of offenses subject to mediation procedures compared to what was provided under Article 37 bis of Law No. 15-02. This expansion is primarily attributed to the efficacy of this procedure [2].

.1.2Pretrial Guilty Plea:

The legislator institutionalized the pretrial guilty plea system (plea bargaining) as a novel mechanism introduced by Law No. 25-14 for presenting cases before the Public Prosecution. This procedure involves the appearance of suspects before the Republican Prosecutor while ensuring full respect for the rights of the defense. Within this context, the court retains the exclusive authority to adjudicate whether to release the defendant, order temporary pretrial detention, or apply judicial surveillance, pursuant to Article 539 of the Criminal Procedure Code [1]

In order to diversify and transform the mechanisms of referral to the court, thereby ensuring the availability of multiple options for the Public Prosecution that vary according to the legal description and circumstances.

Article 539 of the Code of Criminal Procedure stipulates the following: *"The immediate appearance procedures provided for in this section may be followed in misdemeanor cases that are ready for adjudication and do not require a judicial investigation."* (Bouanad Fatima, p. 09)

1.2.2. The Concept of the Appearance System Based on the Prior Guilty Plea (Plea Bargaining)

The system of prior guilty plea is defined as: *"The possibility for the accused to negotiate with the public prosecution, whereby they plead guilty, significantly shortening the procedures, in exchange for obtaining certain benefits. These may include adopting a less severe legal description, requesting a reduced sentence, or other benefits accruing to the accused due to their contribution to the proper administration of criminal justice."*

A. Conditions Related to the Offense

Article 539 of the Code of Criminal Procedure sets forth the conditions for the prior guilty plea:

- The procedure must be initiated spontaneously (ex officio) by the Public Prosecution.
- The procedure must be presented by the person who committed the misdemeanor, or by their lawyer, admitting the facts attributed to them.
- The misdemeanor must not carry a statutory maximum penalty exceeding 5 years of imprisonment.
- The misdemeanor must not be among those related to offenses against national defense, the national economy, or similar matters.
- The misdemeanor must not involve offenses against persons (such as voluntary manslaughter or involuntary manslaughter).
- The offenses must not include those specified in Article 85/4 of the Code of Criminal Procedure, which relate to drug trafficking, transnational organized crime, cybercrimes

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(information and communication technology crimes), foreign exchange offenses, corruption crimes, and money laundering offenses. (Bouanad Fatima, p. 10).

B. Procedural Conditions (Conditions Related to Procedures)

1. In the Event that the Accused Accepts the Prosecutor's Proposal:

Pursuant to the provisions of Article 542 of the Code of Criminal Procedure, the accused or their defense counsel may request a period not exceeding 5 days to respond to the proposed sentence. The Republic's Prosecutor may release the accused under judicial surveillance measures or place them in pre-trial detention for a period not exceeding 20 days, provided that the proposed penalty includes imprisonment.

2. In the Event that the Accused Rejects the Prosecutor's Proposal:

If the accused rejects the proposal or fails to express consent within the granted period, the Republic's Prosecutor must ensure that the accused appears before the trial judge or the investigating judge—in cases where an investigation order is issued—prior to the expiration of the pre-trial detention period.

- **Following Referral to the Trial Judge:** The judge shall review the case. If the case is adjourned, the accused shall remain detained until the final adjudication of the case. However, if the judge orders release, the accused shall be released.
- **Following Referral to the Investigating Authority:** The investigating judge shall rule on the case file by ordering release, judicial surveillance, or pre-trial detention based on a committal order, in accordance with Article 543 of the Code of Criminal Procedure.

2. Restorative Justice for Legal Persons.

In the new law, the Algerian legislator has attached great importance to all legal persons within the scope of reform and alternative measures to public prosecution. Under this modern framework, the Public Prosecution has been granted the authority to defer the criminal prosecution of legal persons prior to its initiation, which will be discussed in detail below:

1.2. Deferral of Criminal Prosecution for Legal Persons

Pursuant to Article 105 of the Code of Criminal Procedure, the Republic's Prosecutor may, prior to initiating criminal prosecution, enter into an agreement with a private legal person against whom allegations have been made, whether as a principal perpetrator or as an accomplice.

For one of the offenses listed in Article 106 of the same law, and regarding the deferral of prosecution in exchange for the restitution of assets and proceeds disposed of or transferred outside the national territory—or their equivalent value—as well as the payment of dues owed to the Public Treasury and the rights of the injured public parties; the deferral of prosecution for a legal person is adopted provided that there is sufficient evidence (prima facie burden) to convict the entity of the acts attributed to it, and that such an option achieves the desired outcomes of a trial while

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saving judicial time, alongside the permissibility of assessing the subsequent damages inflicted upon the Public Treasury and other public institutions.

The judicial interest in debt recovery is deemed preferable to criminal prosecution, particularly when the legal person demonstrates cooperation in putting an end to the crime, coupled with taking disciplinary measures against the natural person who actually committed the offense.[1]

Such a mechanism was entirely unprecedented under the former law, despite its numerous amendments. Previously, Article 51 bis of the former Code of Criminal Procedure stipulated direct criminal prosecution immediately upon the commission of a crime by a legal person through one of its corporate organs or representatives. This is exemplified by commercial companies—such as a joint-stock company (Société par Actions - SPA)—represented by the Chairman of the Board of Directors or the Directorate, pursuant to Articles 610 and 635 of the Algerian Commercial Code.[2] Whenever a legal person committed an offense, Article 18 bis of the Penal Code prescribed the specific penalties to which the legal entity would be subjected.

2.2. Implementation of the Deferral of Criminal Prosecution for Legal Persons.

Conversely, if it is established that the legal person was incorporated for fraudulent or criminal purposes, or if it is proven that the entity has previously committed any of the offenses specified in Article 106 of the Code of Criminal Procedure, such circumstances constitute legal bars that disqualify and preclude the legal person from benefiting from the deferral of criminal prosecution.

Article 106 [of the Code of Criminal Procedure] sets forth the offenses classified as misdemeanors under which a legal person may benefit from the deferral of criminal prosecution. These offenses are enumerated as follows:

- The misdemeanor of willful negligence leading to the loss or squandering of public funds (Article 119 bis of the Penal Code).
- The misdemeanor of obstructing investment (Articles 418 and 419 of the Penal Code).
- Misdemeanors provided for in the Law on the Prevention and Combating of Corruption, with the exclusion of the offense of bribery.[1]
- Misdemeanors provided for in the legislation governing foreign exchange and capital movements to and from abroad.
- Misdemeanors provided for in the Anti-Smuggling Law.
- Misdemeanors provided for in the Monetary and Banking Law.
- Misdemeanors provided for in the Law on the Stock Exchange and Movable Securities.
- Misdemeanors provided for in the Customs Code.
- Misdemeanors of tax fraud and tax evasion.[2]

Pursuant to Article 107 of the Code of Criminal Procedure, the Republic's Prosecutor shall establish a specific timeframe for the execution of the deferral agreement in accordance with a

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schedule that balances the recovery of the fine or restitution with the economic and financial status of the legal person, provided that the total duration does not exceed four (4) years.[3]

The agreement for the deferral of criminal prosecution of a private legal person is concluded with its legal representative, on the condition that the latter is not personally implicated in the offenses attributed to the legal entity. Upon endorsement of the agreement, and after notifying the representative of the Public Treasury as well as the injured public institutions within a period of five (5) days, the agreement is endorsed with the executory formula (*formule exécutoire*), thereby acquiring probative force and the status of an enforceable title

Pursuant to Article 109 of the Code of Criminal Procedure, the deferral of prosecution does not constitute a prior conviction against the legal person, and it legally suspends the statute of limitations for the public action throughout the duration of the execution of the deferral agreement. Should the private legal person fulfill all its resulting obligations, the public action is definitively extinguished, and both the legal entity and the remaining parties are formally notified thereof in accordance with Article 110 of the same law.[1]

Conversely, in the event that the legal person fails to execute its obligations, whether in whole or in part, the Republic's Prosecutor shall notify the legal representative of the entity regarding the termination of the deferral agreement, in accordance with Article 112 of the Code of Criminal Procedure.[2]

Conclusion:

In light of the foregoing, it can be concluded that the Algerian legislator's adoption of restorative justice mechanisms and alternative measures to public prosecution—whether regarding natural persons via the "Prior Guilty Plea" system or legal persons through the "Deferral of Criminal Prosecution"—marks a qualitative leap and a strategic shift in contemporary criminal policy. The primary objective is no longer confined to inflicting traditional punishment; rather, it has expanded to achieve a delicate balance between the efficiency of criminal litigation and the safeguarding of the national economy.

This study has yielded a set of significant findings and recommendations:

1. Findings:

- The newly introduced alternatives (particularly Articles 105 and 539 of the Code of Criminal Procedure) have proven their capacity to alleviate the judicial burden, significantly reducing the time and effort dedicated to adjudicating cases that are ready for disposition.
- Prioritizing debt recovery, the restitution of misappropriated assets, and the reclamation of illicit proceeds transferred abroad over the futile criminal prosecution of legal entities ensures the survival of economic entities and protects employment, while ensuring that the culpable natural persons do not evade disciplinary and penal sanctions.

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- Endorsing the deferral agreement with the "executory formula" elevates it to the status of an enforceable title, thereby ensuring compliance and the swift remediation of damages inflicted upon the Public Treasury.

2. Recommendations:

- Activating the role of financial regulatory and oversight authorities to assist the Public Prosecution in monitoring the legal person's compliance with the terms of the deferral agreement and internal corporate compliance programs.
- Gradually expanding the scope of offenses eligible for these alternative mechanisms, while maintaining stringent safeguards to prevent them from becoming a means of evasion in high-gravity crimes

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[27] Abdelrahman Khalfi, *op. cit.*, pp. 192-193.
[28] Abdelrahman Khalfi, *ibid.*, p. 194.

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