

## MEDIATION FOR THE BENEFIT OF THE DELINQUENT CHILD

إجراء الوساطة لفائدة الطفل الجانح

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### **abstract:**

*Latest developments in Criminology, Penology and other criminal and social sciences made it obvious that the delinquent child is a victim rather than an offender, and that his organic, psychological and emotional composition is not fit to be a subject of criminal law, thus, not eligible for criminal punishment.*

*They were new concepts that had a beneficial effect on contemporary criminal legislation that started developing measures with a different view to juvenile offenders away from the Penal Code and the Criminal Procedures Code.*

*This paper is an attempt to shed light on the role of Mediation as one of those new measures developed by the Legislator for the benefit of the delinquent child. Hence, the problematic of this study can be set as follows: What is Restorative Justice? What is Mediation? What measures to take in order to preserve the interest of the delinquent child?*

*This paper is an attempt to shed light on the role of Mediation as a new measure developed by the Legislator for the benefit of the delinquent child. It is based on questions and problems we raised as follows: What is Restorative Justice? What is Mediation? What measures to take in order to preserve the interest of the delinquent child? The answers are developed throughout the paper in three sections.*

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*We adopted the analytic approach which led us to the following results:*

- *The Algerian Legislator's position on the issue became clear, through the Law 12/15 on Child Protection.*
- *By applying Mediation, the Legislator strikes a balance between the interests of the victim child and the delinquent perpetrator child.*

*Keywords: child, delinquent, mediation*

ملخص:

في ضوء المستجدات والتطورات التي توصل إليها علم الإجرام وعلم العقاب وغيرهما من العلوم الجنائية والاجتماعية، تبين أن الطفل الجانح هو ضحية قبل أن يكون جانحاً هذا من جهة، وكون بنائه العضوي والنفسي والعاطفي لا يصلح لأن يكون شخصا من أشخاص القانون الجنائي.

ولقد كان لهذا التصور تأثير على التشريعات الجنائية المعاصرة حيث ذهبت كلها إلى استحداث إجراءات تتخذ في حق الطفل الجانح تختلف عن الشخص البالغ، ونذكر من بين هذه الإجراءات عملية الوساطة.

ومن خلال هذه الورقة البحثية حاولنا إبراز دور الوساطة كآلية استحدثها المشرع لفائدة الطفل الجانح. وهذا بناء على ما لدينا في حوزتنا من تسيئات وإشكالات والمتمثلة في: ما المقصود بالعدالة التصالحية بما فيها الوساطة؟ وماهي الإجراءات الواجب اتباعها لفائدة الطفل الجانح؟.

وللإجابة على مثل هاته التساؤلات تم تقسيم هاته الدراسة الى ثلاثة مباحث أما بالنسبة للمنهج المتبع قد إعتمدنا المنهج التحليلي وفي الأخير توصلنا من خلال هاته الدراسة الى النتائج التالية :

- إتضح لنا موقف المشرع الجزائري من المسألة وهذا من خلال ما سنه من النصوص (قانون 12 / 15 المتعلق بحماية الطفل)
- إعمال الوساطة يكون المشرع قد أوجد نوعا من التوازن بين مصلحة الضحية من جهة ومصلحة الطفل الجانح من جهة أخرى.
- الكلمات المفتاحية: الطفل، الجانح، الوساطة

## **Introduction**

*The Criminal Procedures Code and Law 15/12 on child protection granted the Republic Prosecutor, as the first person to address the case file before him, the choice to either initiate the lawsuit, order the case to be dismissed if the <sup>1</sup>circumstances of the crime justify it. He could equally resort to criminal mediation, a measure aimed at resolving criminal litigation outside the traditional trial framework. It is a measure based on opening a channel for communication between the concerned parties in response to the Legislator's need to adopt a criminal policy based on reconciliation between members of society to ensure compensation for the victim, and reintegration of the perpetrator.*

*Criminal mediation is mainly based on seeking the assistance of a third party, someone with personality qualifications, social rank and the litigants' esteem, which would enable him to contribute to finding a solution.*

*This paper is an attempt to shed light on the role of mediation as a mechanism developed by the Legislator for the benefit of a delinquent child, which brings us to the problematic of this study; what is a 'delinquent child'? What is 'restorative justice' and 'mediation'? What are the procedures to be followed?*

*To answer this problematic, we divided this study into three sections. In the first one, we address the concept of a 'delinquent child', in the second, the term 'mediation'. In the third and last section, we will bring up the procedures that must be followed when performing the mediation process.*

## **SECTION I: DEFINITION OF A 'DELINQUENT CHILD'**

### **Chapter One: Definition of a 'Child' according to Various Fields of Science:**

*For psychologists and sociologists, a child is "the infant, from birth until full social and psychological maturity"<sup>2</sup> and integration of rationalization elements. He is no longer a child as soon as his perception senses and abilities are fully developed and he could direct himself to a specific act or refrain from it.*

*According the above definition, psychologists and sociologists did not specify what age is 'young age'; a child, according to them, is the infant until full*

social and psychological maturity.

### **Chapter Two: Definition of a 'Child' According to the Law:**

*Law 15/12 related to child protection<sup>3</sup> defines a child as “every person who has not reached the age of eighteen (18) years old.”*

*As for what is meant by a 'delinquent child', according to the United Nations' Office of Social Affairs, it is “a person within the limits of a certain age who appears before a judicial body or any other competent authority because he committed a criminal offense in order to receive care that would facilitate his social re-adjustment.”<sup>4</sup>*

*For the Algerian Legislator, according to The Criminal Procedures Code, Book III, Chapter I, on special rules for juvenile criminals - now abolished, the age of criminal adulthood starts at eighteen years of age on the time the child commits the crime, as per Article 442 thereof, which states: “The age of criminal adulthood is eighteen.”<sup>5</sup> Article 443 thereof, stipulates the following: “The offender's criminal adulthood is observed on the day the offense is committed”, while Article 02 of Law 15/12 related to child protection, defines a delinquent child as “a child who commits a criminal offense and who is at least ten (10) years old, as determined on the day of the crime”. It can be noticed in this text that the Algerian Legislator added a minimum age to determine the meaning of a 'delinquent juvenile', which is in line with the amendment introduced in Article 49 of the Algerian Penal Code, Law 14/01, which stipulates that “... He is not subject to criminal prosecution a minor who has not completed ten 10 years of age”, at which age the child has no criminal responsibility, as confirmed by the Legislator again in Article 56 of Law 15/12 on child protection which stipulates, “He shall not be subject to criminal prosecution a child who has not completed ten (10) years of age.”<sup>6</sup>*

### **Chapter Three: Definition of 'Delinquency'**

*The term 'Delinquency' means 'deviation from normal behavior'. Law specialists use it mostly to denote behaviors that are prohibited by law and lead to penalties. It is also defined as the disregard of the traditions and values of society<sup>7</sup>.*

*There is, however, no unanimous definition for 'child delinquency', although*

there have been international efforts to set a precise definition. For instance, in *The Middle East Studies Workshop on Crime Prevention and Treatment of Offenders* held in Cairo in 1953, a trend appeared that thought the definition should include children at a moral risk of delinquency. The concept of 'child delinquency' was accordingly expanded to include them with children who committed crimes. At the 1955 Geneva International Conference to Combat Crime, another trend emerged restricting the definition only to children who committed crimes<sup>8</sup>, which we consider the ideal and most appropriate definition.

## **SECTION II: DEFINITION OF 'MEDIATION'**

The Algerian Legislator gave no definition for the term 'mediation'. The Criminal Procedures Code merely mentioned its conditions, procedures, and desired objective of repairing the damage resulting from the crime. However, it gave a definition in Law 12/15 related to child protection as follows, "a legal mechanism aimed at concluding an agreement between a delinquent child with his or her legal representative on the one hand, and the victim or his right-owners on the other hand. Its aim is to end the criminal follow-up, to repair the damage suffered by the victim, to contain the effects of the crime, and to contribute to the reintegration of the child".

### **Chapter One: Mediation as a Mechanism for Restorative Justice:**

Mediation is one of the mechanisms of restorative justice. Some define it as "a mechanism for amicably settling legal disputes between two or more teams with the help of a third neutral person who plays the role of mediator in guiding and refining negotiations and helping to suggest solutions". Others define it as "an alternative litigation mechanism aimed at resolving a dispute by the intervention of a neutral person, a mediator, whose task is to assist the parties to the conflict to negotiate a settlement of the dispute."<sup>9</sup>

We may also define it is a procedure that takes place before the criminal case is filed. The Public Prosecution, as the authority responsible for mediation, can launch the said procedure or assign a delegate who meets the required conditions. After the parties approve of the procedure, they meet with the Public Prosecution in order to settle the effects of the committed offense. The offense should belong to the category of what the Criminal Procedures Code

*defines as criminal offenses for adults, and of all misdemeanors and violations committed by children, as stipulated in Law 15/12. The mediation procedure is considered successful when the criminal case is dropped.*

*Through the above definitions, we may conclude that mediation is the old-modern idea of resolving disputes arising between individuals, away from courts, based on providing the parties to the conflict the opportunity to sit in friendly meetings and discuss a settlement of their dispute in a way they see fit.*

***Justification of Criminal Mediation:***

*There are many reasons and justifications for the codification of criminal mediation. As a summary, some are related to criminal reconciliation and others to reducing the burden on the judiciary.*

***A. Justifications Related to Criminal Reconciliation:***

*Justice when based on agreement is more positive and yields better effects than when applied by the judge based on abstract law texts. Restorative justice leads, on the one hand, to reparation of the harm endured by the victim, and on the other hand, to elimination of the sense of social isolation that afflicts the perpetrator.*

***B. Justifications Related to Reducing the Burden on the Judiciary:***

*A good and well-studied application of the mediation system in penal matters will definitely lead to achieving the most important goals: winning time, speeding up the end of disputes, especially those related to individual crimes (certain misdemeanors and offenses). That enables the judiciary to focus on cases that are more serious.*

*As for the legal nature of this procedure, it depends on the angle through which criminal mediation is viewed. Some consider it a social matter in view of its purpose, while others consider it a matter of an administrative nature. There are those who look at it as a form of criminal reconciliation, and others who think about it as an alternative to public advocacy.*

***C. Taking into Account the Best Interests of The Child:***

*Since both criminal punishment and mediation aim to rehabilitate the perpetrator, it must be resorted to the second, especially when it comes to a*



juvenile offender.

*In this context, the Convention on the Rights of Children, through its third article, calls upon all countries to give primary consideration to the best interests of the child in all measures related to children, whether taken by public or private social welfare institutions, courts, administrative authorities or legislative bodies.*

#### **Chapter Two: Mediation in the Algerian legislation:**

*The National Symposium on Reform of Justice held on March 28 and 29, 2005 in Algeria, aimed to facilitate litigation procedures and to bring justice agencies closer to the citizen without coming into conflict with public order or the spirit of the law. It resulted eventually in issuing the Civil and Administrative Procedures Law in 2008, a set of new legal texts, some of which are included in Book Five under the heading “Alternative Methods for Resolving Civil and Administrative Disputes”.*

*Under these texts, the Legislator introduced Conciliation and Judicial Mediation as two modern litigation procedures in civil and administrative matters, along with the Arbitration Procedure<sup>10</sup> that was in place before the amendment.*

*With the exception of Algeria, legislation in Arab countries uses a single term to express reconciliation, regardless of its subject. In criminal matters, the Algerian legislative system employs the two terms of ‘reconciliation’ and ‘mediation’ since the creation of the new mediation procedure, a new form of restorative justice that embodies the Legislator’s new orientation, under Ordinance n° 15/02 of Shawwal 07, 1436 / July 23, 2015 as amendment to Ordinance n° 66/155 that enacts The Criminal Procedure Law<sup>11</sup>.*

*The conciliation procedure had been previously stipulated in the criminal article as one of the reasons for terminating a public lawsuit “... if the law allows it explicitly”, before it has been banned by Ordinance 75/46 for a period of 11 years. It was enacted again under Law 86/05 and remains valid to this day. In this regard, Article 6/4 of the Code of Criminal Procedure stipulates the following: “It is also permissible to conclude the public case by way of conciliation if the law permits it explicitly.” From this perspective, the Algerian Legislator developed the mediation procedure, under Article 110 of Law n° 15/12 on child protection in the field of crimes committed by*

*delinquent children, which stipulates, “Mediation may be performed at any time from the date of the commission of the offense or misdemeanor by the child, and before initiating the public lawsuit. Mediation cannot take place in the event of a crime...”*

*The Legislator provided for mediation in juvenile cases (all misdemeanors and offenses) without restriction while narrowing the scope in cases of adults, according to the provisions of Article 37 bis 02 that stipulates the following: “Mediation in offense matters may be applied to the following crimes: insulting, defamation and invading private life, threats, false accusations, abandoning the family, intentionally refraining from providing alimony, keeping a child, seizing by cheating of inheritance funds before dividing them or common property or company money, issuing a check without balance, sabotaging, or intentionally destroying other people's money, and offenses of assault and battery involuntary and voluntary committed without premeditation, ambushing or use of weapons, crimes of infringement of real property and agricultural crops, grazing on other people's land, as well as consuming food, drinks, or benefiting from other services through fraud. Mediation may also be applied in traffic violations.”*

*Considering the above, we can conclude that criminal mediation, in general, is the procedure whereby the concerned parties agree upon a third party to try to put an end to the state of turmoil caused by the crime, by obtaining adequate compensation for the victim's damage, as well as rehabilitation for the perpetrator. This criminal mediation is midway between initiating the public lawsuit and dismissing the case.*

*Mediation, for the benefit of the delinquent child in particular, means settling the issues arising from the crime and reaching an agreement between the delinquent child and the victim, dealing with the consequences of the restorative process, especially with regard to compensation and reintegration of the victim and the delinquent into society.*

*This is in line with the provisions of the second paragraph of Article 40 of the Convention on the Rights of Children<sup>12</sup>: “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: ... Whenever appropriate and desirable, measures for dealing with such children without resorting to*



*judicial proceedings...”*

### ***Chapter Three: The Parties to the Mediation Process:***

*Criminal mediation is a three-way relationship that includes the mediator, the offender and the victim.*

#### ***1. The Mediator***

*The mediator is the essence of the mediation process and one of the most important parties to this relationship being a distinctive element to it, a neutral party managing the negotiation process to end the litigation between the victim and the offender. The Algerian legislator has empowered the Public Prosecution, having the authority to charge and investigate, as the trustee of the criminal case and as the community's deputy in this field, to act as mediator in penal matters. This is according to Article 01 of the Code of Criminal Procedure that stipulates, “The public case for the application of penalties is initiated and handled by judicial officials or employees entrusted with it according to the law. It is also permissible for the victim party to initiate the case in accordance with the conditions specified in this law.”*

*Referring to the Child Protection Law, its provisions concerning the mediator are different from those of the Code of Criminal Procedure. While the Republic Prosecutor alone is authorized to conduct mediation for the benefit of adults, he can assign one of his assistants as the mediator for the benefit of delinquent juveniles. It can also be one of the judicial police officers or another person, as stipulated in Article 111 of the Child Protection Law. However, in any case, the mediation procedure is subject to the supervision of the Public Prosecution. Judicial officers are required to inform the Republic Prosecutor of all crimes brought to their knowledge through complaints and reports or in their own reports of the findings of their investigations. According to the provisions of Articles 18 and 40 bis 1 of the Code of Criminal Procedure, they are required to provide him with originals of reports and a certified copy as well as all attached documents and seized objects. This is in order to enable him to issue instructions to them in a timely manner on the one hand and on the other hand, to enable him to exercise his competence in the decision-making of whether to initiate the public lawsuit or to dismiss the case.*

*Since the treatment given to juveniles is different in nature from that given to persons of criminal adulthood, it is a necessary requirement to provide special and renewed training to the specialists in charge of conducting criminal procedures regarding juveniles. Such training would qualify them to carry out the task entrusted to them in a manner that achieves the target purposes.*

*As for civil mediation, the judge is the one who issues an order to appoint the person to conduct mediation. The appointed judicial mediator, as per executive decree n° 09/100, should be a person of good conduct and integrity. He should not have received a penalty for an offense against honor or a sentence for a felony or misdemeanor except for non-intentional crimes. Besides, he is required to observe impartiality and independence while carrying out the task of mediation.<sup>13</sup>*

*Criminal mediation and civil mediation are also different in terms of duration. The Algerian legislator did not specify a time frame for the Republic Prosecutor to finish criminal mediation. Going through all the articles, there is no mention of a time frame, while civil mediation should not exceed the period of 03 months, during which the mediator must conclude his mission. However, he may request, with the opponents' consent, to renew the initial period once.*

*In order for these proposals and solutions to be effective in resolving the conflict, the mediator must be granted the authority and prerogatives required to enable him to search, investigate and seek information that would help him understand the circumstances of the conflict and the position of each of the parties, and take every action that he believes would assist in the performance of his mission.<sup>14</sup>*

## **2. The Offender:**

*It is the person who committed an act constituting the crime, whether as an original actor or as a partner. Since mediation is only an optional alternative to traditional litigation procedures, no one of the parties is obligated to accept it. If the perpetrator does not accept the mediation process, forcing him is a prejudice to his right in resorting to the principle of litigation, and as such inadmissible.*

*The offender may also withdraw from the mediation at all times and not accept the agreement, in which case the Public Prosecution shall handle the*

case and continue the criminal follow-up procedures.<sup>15</sup>

*The offender has the right to the assistance of a lawyer as the person legally qualified to contribute to achieving justice by defending the interests of his client.*

### **3. The victim:**

*A victim, in general, is the third side of the mediation triangle and its most important part especially that the process is an alternative considered in order to guarantee his rights. A victim is a person who was subjected to a physical or moral attack criminalized by law, resulting in physical or moral damages. In other words, it is a person whose legally protected interests were attacked through a legally criminalized behavior resulting in harm or danger to him.*

*A child victim, in particular, is a person under a certain age determined by law, who has been subjected to a physical or moral offense as criminalized by law, resulting in sexual, mental, physical or moral damage.<sup>16</sup>*

## **SECTION III: THE PROCEDURES TO BE FOLLOWED IN THE MEDIATION PROCESS**

*The Algerian Legislator has established the procedures to be followed for restorative mediation in Articles 110 to 115 of the Child Protection Law. There are, however, no detailed texts that regulate how this process is carried out in its various stages, and no specifications that control the dialogue between the two parties to the conflict. Such details were left for the agencies in charge of the mediation task to determine them according to the principles they seek to fulfill. We will try in the first chapter of this section to highlight the stages of mediation, and then in the second chapter, we will address the effect of the mediation process.*

### **1. Chapter One: The Stages of the Mediation Procedure:**

*The mediator (the Republic Prosecutor) performs his duties with the aim of reaching a solution to the conflict by making reparations, and restoring the situation to what it was. In order to reach an agreement between the mediation parties, it is natural for the criminal mediation to go through a set of stages, which we will explain as follows:*

## 2. Preparation

*Preparation, the first stage for criminal mediation is divided into two parts. The first part is the mediation proposal, to be made by the Republic Prosecutor or his representative, the child offender, his legal representative or his lawyer, as stated by Article 111 of the Child Law. The Republic Prosecutor has the authority over the decision to conduct mediation, as the word “permissible” indicates. However, the parties cannot compel the Prosecution to accept mediation. In the second part, the parties to the dispute are informed of the proposal, as the last paragraph of the same article of the Child Law stipulates, “If the Republic Prosecutor decides to resort to mediation, he summons the child, his/her legal representative and the victim or his/her beneficiaries to seek their opinions.”*

*The Republic Prosecutor must inform the parties of the decision to conduct mediation and let them know that the dispute will pass over this procedure before the filing of the public lawsuit. This is as required in Article 37 bis of Ordinance n° 15/02, which stipulates the following: “It is permissible for the Republic Prosecutor, before any criminal follow-up ...”, and as referred to in Article 110 of the Child Protection Law. It is clear from these two articles that the Legislator requires the criminal mediation to be conducted before the case is filed. That is, there has to be a criminal case introduced before the Public Prosecution, which requires the availability of elements leading to the assumption of filing a lawsuit; there has to be a legally criminalized behavior attributed to a specific person and harm endured by a victim. Besides, the prosecution should not have taken a decision to act in the criminal case. That is to say, it should be in the stage prior to the filing of the case, which is the period from the moment the prosecution becomes aware of the crime and before initiating any investigative procedures.*

*If the Public Prosecution had filed the criminal lawsuit, it is not permissible to refer the case to mediation. This raises the question: Why would the Legislator limit the mediation procedure to the stage of research and investigation, that is, to the Public Prosecution only, without giving the opportunity to the court bodies to propose this procedure since the objective is reconciliation and amicable settlement of the dispute? The French Legislator adopted this measure, according to the law of 04 January 1993 amended and completed, and in accordance with Article 41/1 of the French*

*Criminal Procedure Code issued on December 1 2014. However, unlike the Algerian Legislator, it expanded the circle of the conciliation authority to the institution in charge of the investigation or the court of judgment to propose measures and procedures for assistance or reform for benefit of the public, after the approval of the victim.<sup>17</sup>*

### **3. Conducting Criminal Mediation:**

*We have previously mentioned that the Legislator did not lay down detailed legislative rules for criminal mediation procedures, but jurisprudence, the French side in particular, did define two phases for the reconciliation session to go through, namely negotiation and the mediation agreement.*

*The first phase is negotiation, which is one of the most important steps of mediation. It represents a decisive phase to its success. The mediator aims through a series of sessions to ensure the parties' agreement to continue the mediation process and to inform them of their rights while he promises the perpetrator that judicial proceedings will be suspended if the mediation process was successful.*

*The second phase is the agreement, which is the purpose behind approving of the mediation procedure. In this phase, the obligations of each party to the conflict are determined. The mediation agreement has to be clear, without any ambiguity, allowing the prevention of any conflict that could arise when implementing the agreement.*

*In this regard, Article 112 stipulates that the mediation agreement shall be drawn up in a minutes report signed by the mediator and the rest of the parties, and a copy of it shall be delivered to each party. If mediation is carried out by the judicial police officer, he shall submit the mediation report to the Republic Prosecutor for approval by means of a seal. This is in accordance with article 112 which stipulates, "... if mediation is done by a judicial police officer, then he must submit the mediation report to the Republic Prosecutor for approval by means of a seal."*

*It is worth noting that the mediation agreement is not subject to any form of appeal as stipulated in Article 37 bis 5 of the amended Criminal Procedure Law.*

## **Chapter Two: The Effect of Mediation on the Public Lawsuit:**



*The public lawsuit does not cease after the agreement of the parties to the dispute. Rather, the accused must implement the content of that agreement. This is in accordance with Article 06, paragraph 3 of the Criminal Procedures Law, which stipulates the following: “The public lawsuit shall be terminated by implementing the mediation agreement ...”*

*Failure by the parties to accept the mediation, failure to reach an agreement between the parties, or failure by the perpetrator to fulfill the obligations imposed on him, the Public Prosecution takes a decision to handle the public lawsuit, as a natural consequence of the failure of the mediation procedure. The Public Prosecution performs its job by initiating a lawsuit against the delinquent child, as stipulated in the second paragraph of Article 115 of the Child Law: “In the event that mediation obligations are not implemented within the time specified in the agreement, the Republic Prosecutor will initiate the lawsuit against the child.” This is the same action taken against adult perpetrators as Article 37 bis 8 stipulates: “If the agreement has not been implemented within the deadlines, the representative of the republic takes what actions he deems appropriate regarding the follow-up procedures”.*

#### **1. Tolling The Statute Of Limitations For The Criminal Proceedings:**

*Article 110, Paragraph 3 of the Algerian Child Law, stipulates, “Resorting to mediation will stop the statute of limitations from the date of the Republic Prosecutor’s issuance of the mediation decision.”*

*The Legislator decided to stop the statute of limitations for the mediation period in order to preserve the interests of the victim and to ensure that he receives compensation for the damage suffered. Tolling the statute of limitations also deprives the perpetrator from opportunity to resort to procrastination in the mediation procedure with a view to exploiting the suspension of the lawsuit, and then the statute of limitations, thus wasting the right to initiate it, which is inconsistent with the objective behind mediation.*

#### **2. Expiry of the Public Lawsuit:**

*After drafting the mediation agreement in a report signed by the mediator and the rest of the parties, a copy is delivered to each party. The mediation report must include compensation for the victim or its beneficiaries, as per the provision of Article 37 bis 04 of Order 15/02. This report is approved to*

*serve as an executive bond in accordance with the Civil and Administrative Procedures Law.*

### **Conclusion:**

*Based on the above, and after we reviewed in this paper the most important texts relevant to the subject topic, we can clearly see the position of the Algerian Legislator regarding the issue of mediation for the benefit of a delinquent child. It is a good initiative considering its positive effects that contribute in one way or another to preserving the child's personality by avoiding him the trial procedures and what criminal penalties they would yield, especially penalties depriving of liberty, and some measures applicable to a delinquent child such as separating him from his family. Through mediation, the Legislator has created a balance between the interest of the victim on the one hand and that of the delinquent child on the other hand. Nevertheless, we make appeal to the Legislator to intervene again in order to expand the application scope of mediation to include the trial phase, contrary to what is currently in place, where the Legislator has restricted the field for the application of mediation to the stage of judicial seizure. Such amendment would contribute to the reinforcement of the principle of reconciliation and bringing the litigating parties closer on the one hand, and to reducing the number of files brought before the courts on the other hand.*

### **References:**

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- <sup>2</sup> Muntasir Said Hemmouda & Bilal Amin Zeyn al-Din, *Inhiraf al-Ahdath – a juristic study in the light of criminology, penology and Islamic law* - published by Dar al-Fikr al-Jamia, Alexandria, Egypt, 2007, page 24 .
  - <sup>3</sup> Law 15/12 of 28 Ramadan 1436 AH / 15 July 2015 on the protection of the Algerian child, Official Gazette, issue n° 39, 03 Shawal 1436 AH / 19 July 2015.
  - <sup>4</sup> Munira al-Asra, *Inhiraf al-Ahdath wa Mushkilat al-Awamil*, al-Maktab al-Masri al-Hadith, Alexandria, 1974, page 23.
  - <sup>5</sup> Law 06-22 signed on 20 December 2006, containing the Code of Criminal Procedures, Official Gazette, issue n° 84 of 24 December 2006, page 4, as amendment and completion of Article 66-155 of 18 Safar 1386 AH / 8 June 1966.
  - <sup>6</sup> Law 14-01 signed on 4 February 2014, containing the Penal Code, Official Gazette, issue n° 7 of 16 February 2014, page 4, as amendment and completion of Article 66-156 of 18 Safar 1386 AH / 8 June 1966

7 Fawziya Abd al-Sattar, Muamalat al-Ahdath, legal provisions and punitive treatment, published by Dar al-Nahda al-Arabiya, 1994 page3.

<sup>8</sup> Zeynab Ahmad Aween, Qadaa al-Ahdath, a comparative study, first edition, second print, published by Dar al-Thaqafa li-l-Nashr wa l-Tawzie, Amman, 2009, page 9

9 Farid Ben Juha, al-Sulh bi-l-Wasata in the light of the new revision of Majallat al-Ijra'at al-Jaza'iyya' on 12 August 2009, al-Qanun periodical, Tunisia, issue n° 84/85, February 2010, page 35

10 "Mediation and Arbitration have the following aspects in common :

- Both are amicable processes.
- Both occur with the interference of a third party, with the consent of the parties to the dispute.
- Both aim to resolve the dispute.

They are different, however, in the fact that Mediation relies on a solution to come from the parties to the dispute, with their agreement and consent, a fact which give the solution a binding statue to them, whereas Arbitration is based on a decision to be made by the Arbitrator, without need to the consent of the parties."

Dalila Jellou, al-Wasata al-Qada'iya fi l-Qadaya al-Madaniya wa l-Idariya, published by Dar al-Houda, 2012, page 8.

11 Article 02/15 dated 23 July 2015 as amendment and completion of Article 66-155 containing the Penal Code, Official Gazette, issue n° 40, 23 July 2015.

12 The Convention on the Rights of the Child is an international treaty that determines children's civil, political, economic and cultural rights. Compliance to its terms is monitored by the United Nations' Committee on the Rights of the Child, which is composed of members from different countries. It was adopted by the UN and opened for signature on 20 November 1989, and it came into force on 2 September 1990. See: The Arab Council for Childhood and Development, Taqrir al-Ada' lil-Majlis al-Arabi lil-Tufula wal-Tanmia Nahwa Tatbiq al-Ialan al-Arabi wal-Alami lil-Tufula, 2001, page13.

<sup>13</sup> Besides, he is expected to be trustworthy, honest and dedicated to his mission. He must be God-fearing and indifferent to any kind of pressure whatever the origin.

14 Khaldiya Makki, al-Wasata fi Jara'im al-Ahdath Takris li-Masalih al-Tifl al-Fudla, Majalat Abhath Qanuniya wa Siyasiya, issue n° 4, November 2017, page 11.

<sup>15</sup> Sharif Sayyid Kamil, al-Himaya al-Jina'iya lil-Atfal, published by Dar al-Nahda al-Arabiya, second edition, 2006, page 48.

16 Hemmou b. Ibrahim Fekhar, al-Himaya al-Jina'iya lil-Tifl fil-Tashria al-Jaza'iri wal-Qanun al-Muqarin, 2016, page38.

17 Jean-François Renucci, Christine Courtin, Le Droit Pénal Des Mineurs, fourth edition, Presses Universitaires de France, 2001, page 23.