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Disposition of the Public Prosecution Regarding Evidentiary Gathering Reports by Refraining from Initiating Public Prosecution "Pursuant to Order No. 25-14 establishing the new Code of Criminal Procedure"

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***Abstract*—**This study examines the discretionary authority of the Algerian Public Prosecution to refrain from initiating public action based on the results of evidentiary gathering, either through the issuance of an archival decision or by resorting to criminal mediation. Anchored in the principle of prosecutorial expediency (opportunité des poursuites), the research analyzes the legal framework, procedural conditions, and implications of both mechanisms. The findings highlight a transformative prosecutorial model grounded in proportionality, efficiency, and restorative justice, reflecting Algeria's evolving approach to criminal case management in accordance with contemporary legal standards.

***Keywords*—**Public Prosecution; Archival Decision; Criminal Mediation; Prosecutorial Discretion

Introduction

As the institutional embodiment of the State's authority in matters of criminal justice, the Public Prosecution holds a central position within the legal architecture of modern criminal procedure. Entrusted with the representation of both the State and society, it bears the constitutional and statutory mandate to investigate criminal conduct, identify and pursue offenders, and ensure that justice is upheld through appropriate legal channels. This authority is exercised not merely as a procedural function, but as a sovereign responsibility aimed at safeguarding public order, protecting individual rights, and reinforcing the rule of law[1].

In line with the well-established principle of prosecutorial discretion—commonly referred to in civil law jurisdictions as *opportunité des poursuites*—the Public Prosecution is not mechanically bound to initiate proceedings in every instance where a legal violation is detected. Rather, it is empowered to assess the legal merits, evidentiary strength, social implications, and public interest considerations associated with each case, and to determine whether the initiation of public action is necessary, appropriate, or even desirable. This discretion forms the cornerstone of a rationalized prosecutorial policy, enabling the Public Prosecution to calibrate its decisions to the circumstances of each case and to the broader goals of justice.

Accordingly, in the course of examining evidentiary reports produced during preliminary inquiries—typically conducted by the judicial police—the Public Prosecution may conclude that there is insufficient legal or factual basis to support the institution of criminal proceedings. In such cases, it may elect not to refer the matter to the judiciary for adjudication and instead issue an archival decision, thereby bringing the potential public action to a close without proceeding to trial. This prerogative highlights a profound procedural development: the ability of the prosecution to terminate criminal action at a pre-trial stage, thus reframing its role from a mere initiator of punitive action to a discretionary gatekeeper of judicial intervention.

Traditionally, the Public Prosecution's role was perceived through the lens of retributive justice, functioning primarily as a conduit through which accused individuals were brought before the courts to answer for their

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crimes. This model emphasized the automatic pursuit of prosecution upon the commission of an offense, with little room for procedural flexibility or context-sensitive judgment. However, with the modernization of criminal justice systems and the entrenchment of principles such as proportionality, restorative justice, and procedural economy, the role of the prosecution has undergone a significant transformation. It now entails not only the initiation of proceedings but also the management and resolution of criminal conflicts in ways that account for the nature of the offense, the needs of the victim, the rehabilitation of the offender, and the interests of society at large.

This evolution has conferred upon the Public Prosecution an unprecedented degree of procedural autonomy, particularly in its capacity to manage the outcomes of the evidentiary phase. It may, depending on the circumstances, opt for non-judicial remedies, including restorative mechanisms such as criminal mediation, especially in cases where the offense is of minor gravity and the parties demonstrate a willingness to resolve the conflict amicably. Such mechanisms enable the prosecution to divert cases from formal judicial channels, thereby easing the burden on courts, accelerating dispute resolution, and fostering community reconciliation.

Far from diluting the authority of the Public Prosecution, this shift represents a more nuanced and socially responsive understanding of its role. No longer limited to being an agent of punitive enforcement, the prosecution now also operates as a mediator of social peace, an arbiter of proportional justice, and a custodian of institutional efficiency. By tailoring its interventions to the facts and equities of each case, the Public Prosecution contributes to a more agile and humane criminal justice system, one that reconciles legality with practicality and justice with compassion.

In this light, the present study aims to delineate the precise legal conditions under which the Public Prosecution is authorized to abstain from instituting public proceedings. These conditions may arise from either objective legal barriers—such as the absence of criminal intent or the existence of a ground for justification—or from the discretionary choice to engage in alternative conflict resolution, such as criminal mediation, as explicitly regulated under Algerian procedural law.

Accordingly, the Algerian legislator has vested the Public Prosecution with broader discretionary powers that go beyond its traditional mandate. These powers include the right to archive a case file without referral to a court where prosecution is unwarranted, or to initiate mediation as an alternative procedural response. Both avenues reflect a commitment to procedural efficiency, individualized justice, and the rational allocation of institutional resources.

Therefore, the fundamental legal issue explored in this study concerns the extent and limits of the Public Prosecution’s authority to dispose of evidentiary reports without judicial referral, and the legal mechanisms—archival decisions and criminal mediation—through which such discretion is operationalized.

To address this issue, the study adopts a descriptive-analytical methodology, rooted in the examination of relevant legislative provisions, doctrinal interpretations, and practical applications. The analysis is structured into two principal sections, each addressing one of the core discretionary tools available to the Public Prosecution: (1) the archival decision and (2) criminal mediation, both examined through the lens of Algerian law and prosecutorial practice.

1- The Public Prosecution’s Disposition of Evidentiary Reports through Archival Measures

Where the Public Prosecution determines that no grounds exist to pursue public criminal proceedings, it may issue a decision to archive the case file. This archival decision represents one of the most consequential prerogatives exercised by the prosecution at the stage of evidentiary gathering, as it effectively precludes judicial scrutiny by barring the matter from reaching the courts[2].

Accordingly, this section will be divided into two main subsections: the first (1.1) shall examine the definitional scope, legal nature, and ambit of the archival decision, while the second (1.2) shall address the grounds for issuance and the legal consequences resulting therefrom.

1-1- The Conceptual Framework of the Archival Decision

This section aims to delineate the meaning of the archival decision and distinguish it from the prosecutorial order of "no grounds for prosecution" (1.1.1), followed by an exposition of its legal character (1.1.2).

1-1-1- Defining the Archival Decision and Differentiating It from the Order of No Grounds for Prosecution

This subsection begins by elucidating the conceptual and legal meaning of the archival decision, outlining its procedural context, normative function, and administrative character. It then proceeds to draw a systematic distinction between this discretionary prosecutorial measure and the judicial order of non-prosecution—commonly referred to as the decision of "no grounds for prosecution"—by highlighting their respective issuing authorities, procedural prerequisites, legal effects, and avenues for contestation. This comparative analysis aims to clarify the institutional boundaries and legal implications of each mechanism within the broader architecture of criminal procedure[3].

First – Definition of the Archival Decision:

The legislator does not explicitly define the archival decision, but merely refers to it in paragraph 5 of Article 47 of the Code of Criminal Procedure as a procedural measure available to the Public Prosecution upon its determination not to initiate public prosecution[5]. According to Raouf Obeid, the archival decision is defined as: "An administrative directive issued by the Public Prosecution in the course of disposing of investigative findings, whereby it temporarily refrains from bringing the case before the trial court, without creating any binding legal effect"[4].

Similarly, Suleiman Barche defines it as: "An administrative measure adopted by the Public Prosecution, in its capacity as the administrative authority overseeing the entirety of preliminary investigations, through which it decides not to pursue public criminal action"[5].

Ali Adnan Al-Feel defines it as follows: "The archival order is an administrative act issued by the Prosecutor General based on the evidentiary report, signifying the Prosecution's decision to refrain from issuing charges and initiating criminal proceedings due to the unsuitability of the case for prosecution"[6].From our own legal standpoint, we posit that the archival decision is an administrative act issued by the Public Prosecution at the conclusion of the evidentiary gathering phase, whereby it elects, on a provisional basis, not to initiate public proceedings upon determining that no legal grounds exist to proceed[7]. Importantly, this decision remains subject to revocation by the Prosecution, provided the criminal act recorded in the evidentiary report has not become time-barred[8].

Second – Distinction between the Archival Decision and the Order of No Grounds for Prosecution:

The principal differences between the archival decision and the order of no grounds for prosecution may be summarized as follows:

1. In Terms of Issuing Authority:

The archival decision is issued by the Public Prosecution prior to the initiation of public proceedings. It results from acts of inquiry, surveillance, and evidentiary gathering[9]. Conversely, the order of no grounds for prosecution cannot be issued except by an investigating judge, after public prosecution has been initiated through an introductory request or a civil complaint. This order is issued at the close of judicial investigation, formally declaring the termination of proceedings without referral to the trial court[10].

2. In Terms of Appealable Nature:

The archival decision, being administrative in nature, is not subject to appeal. However, it may be withdrawn or reversed by the Public Prosecution itself. Importantly, it prevents the victim from initiating public prosecution through a civil claim before the investigating judge or through direct summons before the trial court, unless the legal requirements for such action are satisfied. In contrast, the order of no grounds for prosecution is judicial in nature and may be appealed before the Indictment Chamber either by the Public Prosecution or the civil claimant. Once final and unchallenged, it bars any renewed prosecution on the same facts unless new evidence emerges.

1-1-2- The Legal Nature and Scope of the Archival Decision

This section undertakes a detailed examination of the legal characterization of the archival decision, focusing on its juridical nature, normative foundation, and classification within the framework of administrative versus judicial acts. It further proceeds to analyze the procedural scope of this measure—namely, the types of cases in which it may be employed—and explores its legal ramifications, including its effect on the status of the proceedings, the rights of the parties involved, and the extent to which it may be revisited, challenged, or reversed within the boundaries of prosecutorial discretion.

First – Legal Nature of the Archival Decision:

The archival decision constitutes an administrative, rather than a judicial, measure issued by the Public Prosecution in its capacity as an evidentiary—not investigative—authority. This characterization is underscored by the fact that such a decision is rendered prior to the initiation of public prosecution through any of the formal procedural means prescribed for instituting criminal proceedings.

The administrative nature of the decision is further confirmed by the language of Article 47, paragraph 5 of the Code of Criminal Procedure, which provides that the prosecution may either refer the file to the competent judicial authority for investigation or adjudication, or issue an archival decision, which remains subject to ongoing review[11].

By employing the expression "subject to continuous review"—rather than stating that the decision is "appealable" or "subject to challenge"—the legislator has unambiguously affirmed the administrative (as opposed to judicial) character of the archival decision, thereby eliminating any interpretive ambiguity in this regard.

Second – Scope of the Archival Decision:

The Public Prosecution is empowered to issue an archival decision in cases involving misdemeanors and infractions, provided that one or more of the legal grounds for archiving are present. This authority applies even where the perpetrator remains unidentified, except in cases of misdemeanors for which preliminary judicial investigation is mandated by special legislative provisions. However, in felony cases, the Public Prosecution is not authorized to issue an archival decision under any circumstances—even when the offender is unknown. In such cases, the law imposes a strict obligation upon the prosecution to file an introductory request with the investigating judge, thereby triggering a mandatory judicial investigation, as expressly required under Article 66 of the Code of Criminal Procedure.

1-2- The Legal Framework Governing the Archival Decision

The actions of the Public Prosecution, across various criminal justice systems, rest fundamentally upon two primary legal instruments: the Penal Code and the Code of Criminal Procedure. In exercising its discretion to initiate or forgo prosecution, the Public Prosecution acts pursuant to the principle of prosecutorial expediency, drawing its authority from both codes. Consequently, the issuance of an archival decision must be grounded in legally cognizable justifications derived from these normative sources. Such a decision also entails a series of significant legal effects.

Accordingly, this section will be divided into two parts: the first will examine the legal and factual grounds for issuing the archival decision, while the second will analyze its ensuing legal consequences.

1-2-1- Grounds for Issuing the Archival Decision

Criminal law scholars who adhere to the doctrine of prosecutorial expediency concur that the archival decision must be based on specific grounds, typically classified into legal grounds and substantive (factual) grounds.

First – Legal Grounds for the Archival Decision:

The Public Prosecution is vested with the authority to temporarily suspend the course of criminal proceedings for valid legal reasons. It may resume prosecution once such obstacles cease to exist, provided that the statutory limitation period has not expired. These legal grounds are regarded as insurmountable procedural or substantive barriers to initiating public prosecution. They include:

1. **Absence of Criminal Characterization of the Act:** If it appears that the act under investigation does not constitute a punishable offense under the Penal Code or its complementary laws, the Public Prosecution shall issue an archival decision. For example, if a divorced woman alleges that her former husband failed to pay her divorce-related entitlements, but the investigation reveals that the claimed amounts constitute compensatory damages for arbitrary divorce rather than legal maintenance, the prosecution will proceed with archiving the file.
2. **Existence of a Justifying Cause (Grounds of Justification):** This is particularly relevant in cases involving lawful self-defense, as articulated in Article 39, paragraph 2 of the Penal Code, which states: "There is no offense where the act was rendered necessary by the immediate need to defend oneself, another person, or property, provided that the means of defense are proportionate to the gravity of the aggression." In practice, however, the Public Prosecution tends to avoid issuing an archival decision in such cases, preferring instead to

refer the matter to the investigating authorities, as self-defense is notoriously difficult to establish based solely on preliminary findings.

3. **Existence of a Bar to Punishment:** When all elements of the offense are present, but the perpetrator benefits from a statutory bar to punishment, the Public Prosecution is required to archive the case. This typically arises in property-related offenses committed between ascendants and descendants. Nevertheless, in practice, the Prosecution may still pursue criminal action in such cases in order to preserve the victim's right to civil compensation before the criminal court, as permitted under Article 368 of the Penal Code[12].
4. **Existence of a Bar to Criminal Responsibility:** While doctrinally considered a valid legal ground for archiving, bars to criminal responsibility—such as insanity or minority—rarely result in archival decisions in practice. Instead, offenders are prosecuted to allow for the imposition of security measures, such as commitment to psychiatric institutions under Article 21 of the Penal Code, or protective and educational measures for minors above the age of 10 pursuant to Article 49, paragraph 2.
5. **Existence of a Procedural Prerequisite to Prosecution:** Generally, the Prosecution initiates public action upon learning of a criminal offense. However, in certain cases, prosecution is conditional upon prior receipt of a complaint, request, or authorization. Upon satisfaction of such prerequisites, the Prosecution regains its discretion to assess the expediency of initiating proceedings[13].
6. **Existence of a Cause for Extinction of Public Action:** As per Article 6 of Ordinance No. 15/02, public action may be extinguished by both general and specific causes. General causes include the death of the accused, statute of limitations, general amnesty, repeal of the criminal provision, and the issuance of a final judgment. Specific causes include mediation, withdrawal of complaint, and legal reconciliation. In all such instances, the Prosecution shall archive the relevant file.

Second – Substantive Grounds for the Archival Decision:

These refer to factual obstacles that prevent the initiation of public prosecution. In such cases, the Public Prosecution may decide to archive the case in the exercise of its discretionary authority under the principle of expediency. Common examples include[14]:

1. **Factual Inaccuracy of the Alleged Offense:** This occurs when the reported incident is later revealed, through the evidentiary report, to have never occurred—i.e., a false report. In such cases, the Prosecution archives the case due to the lack of factual basis[15].
2. **Absence or Insufficiency of Evidence:** If the evidentiary findings fail to establish sufficient grounds to indict the suspect, the Public Prosecution will issue an archival decision for lack of evidence[16].
3. Unknown Perpetrator: Where an offense is committed but investigative efforts fail to identify the perpetrator —and the offense qualifies as a misdemeanor or infraction—the Public Prosecution may archive the case. However, in felony cases, especially intentional homicide, the Prosecution is prohibited from archiving the case, even if the perpetrator remains unidentified. Instead, it must file an introductory request for judicial investigation, as mandated by Article 139 of the Code of Criminal Procedure.
4. **Prosecution Deemed Inexpedient:** Applying the principle of expediency, the Public Prosecution may refrain from initiating proceedings even where the offense is established, based on a proportionality assessment between the harm caused by the crime and the potential consequences of prosecution. This is particularly relevant in offenses such as property damage during public demonstrations.
5. **Triviality of the Offense:** In some cases, the Prosecution may decide to archive the case despite the commission of an offense and identification of the perpetrator, if the matter is deemed legally insignificant. This approach aims to prevent the Prosecution from becoming a tool for personal vendettas, especially in petty matters.

1-2-2- Legal Effects Resulting from the Archival Decision

The administrative character of the archival decision, as opposed to a judicial act, gives rise to a series of distinct and legally consequential effects that shape both the procedural posture of the case and the rights of the parties involved[17]. These legal ramifications, derived from the non-adjudicative nature of the measure, may be systematically articulated as follows:

A. Non-Binding Nature of the Archival Decision upon the Public Prosecution: The decision to archive a case file, issued by the Public Prosecution, is not binding upon it. The prosecution retains full discretion to reverse or

revoke the decision at any time, without condition or limitation, provided that the criminal act in question has not become time-barred by prescription[18].

B. Absence of Res Judicata Effect: The archival decision carries no res judicata effect and does not preclude the victim of the offense from initiating a civil action. In other words, the aggrieved party may, notwithstanding the issuance of an archival decision by the prosecution, institute public proceedings through a civil claim before the investigating judge, provided that the procedural requirements for such an action are satisfied.

C. Immunity from Judicial Challenge: The archival decision is not subject to appeal or review by the victim or the injured party through any of the legally prescribed avenues of challenge. However, this does not foreclose the possibility of pursuing either a civil complaint before the investigating judge or direct summons before the trial court, both of which remain legally permissible even after the issuance of the archival decision[19].

2- The Discretionary Power of the Public Prosecution to Resort to Mediation Based on Preliminary Investigation Results

The Algerian legislator has codified criminal mediation under Articles **59 to 68** of the Code of Criminal Procedure. Prior to the initiation of any criminal proceedings, the Public Prosecutor (Procureur de la République), in the course of evaluating the results of preliminary inquiries, may opt to resort to mediation in specific categories of offenses[20]. This may occur either upon the prosecutor's own initiative or at the request of the victim or the alleged offender, with the aim of remedying the disruption caused by the offense or compensating the harm suffered by the victim.

Accordingly, this section will be structured into two subsections. The first will explore the conceptual framework of criminal mediation, while the second will address its legal basis and procedural framework under Algerian law.

2-1- Conceptual Framework of Criminal Mediation

Criminal mediation constitutes a procedural mechanism that enables the Public Prosecution, pursuant to the principle of prosecutorial expediency, to refrain from referring the case to the trial court in circumstances explicitly provided for by law.

The significance of criminal mediation lies in the advantages it offers, most notably by reinforcing the prosecutorial role in managing public action through the provision of a third option for dispute resolution. This option entails referring the criminal dispute to a neutral third-party mediator, tasked with facilitating an amicable resolution between the parties involved. Such resolution serves the dual objective of securing restitution and satisfaction for the victim while sparing the alleged offender the adversarial consequences of judicial proceedings. Mediation also alleviates the burden on the courts, particularly in minor criminal matters.

This subsection will commence by providing a comprehensive definition of the concept of criminal mediation, situating it within the broader context of contemporary prosecutorial practices and restorative justice frameworks[21]. It will examine the doctrinal, legislative, and functional dimensions of mediation as a legally recognized alternative to formal criminal prosecution. Following this definitional groundwork, the subsequent subsection will offer a detailed analysis of the material, personal, and temporal scope of criminal mediation, along with a discussion of the specific types of offenses and procedural conditions under which it may be lawfully applied, thereby clarifying its subject matter and operational boundaries within the Algerian criminal justice system[22].

2-1-1- Definition of Criminal Mediation

Legal scholars have offered varying definitions of criminal mediation. According to Mohamed Taha Jalal, it is: "A procedural mechanism vested in the Public Prosecution, pursuant to its discretionary authority in managing criminal proceedings, whereby it seeks to resolve the dispute before it in a manner aimed at repairing the harm caused by the offense, subject to the mutual consent of the parties involved." Other doctrinal perspectives define it as: "A conciliatory method between disputing parties, facilitated by a neutral third party, with the aim of achieving an amicable solution that safeguards social relationships"[23].

The Algerian legislator, the Code of Criminal Procedure, refrained from defining criminal mediation explicitly. However, a definition can be inferred from Law No. 15/12 on Child Protection, specifically Article 2, which states: "Mediation is a legal mechanism aimed at concluding an agreement between the juvenile offender and his/her legal representative, on the one hand, and the victim and their legal successors, on the other. Its objectives

are to terminate prosecution, compensate the victim, eliminate the effects of the offense, and contribute to the social reintegration of the minor"24.

2-1-2. Scope of Criminal Mediation

The ability to forgo direct referral of a criminal case to the trial court through the use of mediation is contingent upon meeting specific criteria related to the material, personal, and temporal scope of this procedure.

First – Material Scope:

Pursuant to the provisions of Article 59[25], which amends and supplements the Code of Criminal Procedure, the Algerian legislator has taken a restrictive and enumerative approach to the application of criminal mediation, confining its use to a specific and exhaustively listed group of misdemeanors (*délits*).

This legislative choice reflects a deliberate effort to balance the promotion of restorative justice mechanisms with the imperative of maintaining public order and judicial authority in more serious criminal matters. As such, criminal mediation is not a universally applicable tool, but rather one that may be invoked only in cases where the offense is of relatively limited gravity, where societal harm is considered reparable, and where interpersonal reconciliation remains a feasible outcome. The offenses eligible for mediation, as defined by the aforementioned provision, include but are not necessarily limited to the following:

– Violation of privacy,
– Threats,
– False denunciation,
– Family abandonment and failure to pay alimony,
– Refusal to deliver custody of a child,
– Fraudulent appropriation of inheritance assets prior to their division,
– Fraudulent appropriation of co-owned or corporate property,
– Issuance of a check without sufficient funds,
– Willful damage or destruction of another’s property,
– Unintentional bodily harm (in the context of misdemeanors and infractions),
– Infringement upon real property,
– Damage or destruction of agricultural crops, trespassing for grazing purposes,
– Fraudulent consumption of food, beverages, or other services.

In addition to the expressly enumerated misdemeanors set forth under Article 59 bis 2 of the Code of Criminal Procedure, the Algerian legislator has further broadened the material scope of criminal mediation by expressly authorizing its application to all offenses classified as infractions—that is, lesser criminal violations characterized by their minimal gravity and reduced social harm.

This legislative extension signifies a deliberate policy choice to encourage restorative, non-adversarial resolutions in cases where the punitive objectives of criminal law may be achieved more effectively through conciliation, compensation, and community reintegration rather than formal prosecution. In doing so, the legislator affirms the relevance of mediation not merely as an exceptional remedy, but as a structural component of criminal justice policy in dealing with low-level offenses, thereby promoting procedural economy, reducing caseloads, and fostering social harmony.

Second – Personal Scope:

Pursuant to the provisions of Article 59 bis and its subsequent articles within the Code of Criminal Procedure, the personal scope of criminal mediation is delineated with reference to the specific categories of parties who are legally authorized to initiate, propose, accept, or participate in the mediation process. This framework ensures that only those individuals who are directly and materially implicated in the criminal conflict possess the procedural capacity to engage in such alternative resolution mechanisms.

Criminal mediation may be triggered at the initiative of the Public Prosecutor, who may act ex officio, in the exercise of prosecutorial discretion, upon reviewing the preliminary evidence gathered during the investigatory phase. Alternatively, mediation may be initiated in response to a formal request submitted either by the victim or the alleged offender, thereby reflecting a consensual interest in seeking a restorative solution to the conflict in lieu of conventional adversarial litigation.

The process itself is formalized through a written agreement, the legitimacy and enforceability of which are strictly contingent upon the voluntary, informed, and uncoerced consent of both parties. This requirement of mutual agreement is not merely procedural but reflects the substantive ethical foundation of mediation as a cooperative rather than coercive model of justice.

Crucially, the objective of mediation in this context extends far beyond the superficial settlement of a legal dispute. It aims to confront the root causes of the offense, to repair the moral and social breach it has occasioned, and to rebuild trust or at least mutual recognition between the parties involved. The mediation process is designed to provide both victim and offender with a structured environment in which their voices can be heard, their grievances acknowledged, and their interests addressed in a manner conducive to healing and accountability.

To facilitate this, the parties may be accompanied by legal counsel, and they may also benefit from the involvement of a neutral and professionally trained mediator, whose role is to foster dialogue, ensure procedural fairness, and guide the parties toward a balanced and legally sound resolution. Through this personalized and participatory framework, criminal mediation underscores a shift in modern prosecutorial practice—one that repositions the Public Prosecution not merely as an agent of punitive enforcement, but as an arbiter of restorative justice and social equilibrium.

Third – Temporal Scope:

The temporal dimension of criminal mediation is of paramount importance, as it defines the precise procedural stage at which such an alternative mechanism may lawfully be invoked. Pursuant to the provisions of Article 59 bis of the Code of Criminal Procedure, read in conjunction with Article 110 of the Child Protection Act, criminal mediation is bound by a strict chronological condition: it must be initiated before the formal commencement of public criminal proceedings[26].

This means that the Public Prosecutor may resort to mediation only while exercising preliminary discretion in the assessment of evidentiary material gathered during the investigation phase, and prior to the case being officially referred to an investigative or trial judge. Once the Public Prosecution undertakes any procedural act that results in the activation of the judicial process—such as submitting an introductory request for investigation, referring the case to the competent trial court, or filing a direct charge—the legal window for initiating mediation is unequivocally closed.

This temporal restriction is not arbitrary; it is rooted in the functional separation of powers and jurisdiction within the criminal justice system. Upon referral of the case to another judicial authority, whether it be the investigative judiciary or the trial bench, the case becomes subject to the procedural and adjudicative control of that authority. Consequently, the Public Prosecution is divested of the power to invoke mediation, as the matter has entered a new procedural phase governed by different legal actors and competencies.

Moreover, the temporal limitation underscores the nature of criminal mediation as a pre-prosecutorial measure, designed to intervene before the adversarial machinery of criminal justice is set into motion. Its primary function is to defuse conflict, restore social harmony, and offer reparative justice in a consensual and expedited manner, which would be structurally incompatible with the rigidity of judicial proceedings once formally initiated.

In practice, this requirement obliges the Public Prosecutor to assess without delay whether the case at hand qualifies for mediation under the applicable legal conditions, and to initiate the process in a timely and efficient manner. Any failure to act within this prescribed temporal window irrevocably forecloses the option of mediation, even if the offense in question would otherwise fall within the scope of eligible crimes.

Accordingly, the temporal scope of criminal mediation reflects both a procedural safeguard and a jurisdictional threshold. It ensures that mediation retains its character as a proactive and discretionary prosecutorial tool, rather than a reactive or post hoc substitute for judicial determination. This distinction preserves the integrity of the criminal process while promoting the expedient resolution of appropriate cases at the earliest possible stage[27].

2.2. Conditions and Legal Effects of Criminal Mediation

First – Conditions of Criminal Mediation:

The conditions governing the implementation of criminal mediation are as follows:

1. Eligibility of Offenses: Criminal mediation is permissible only in the offenses exhaustively enumerated by the legislator under Article 59 bis 2 of the Code of Criminal Procedure. It may not be applied beyond these specified infractions and misdemeanors[28].

2. Written Agreement Requiring Mutual Consent: Mediation shall be conducted pursuant to a written agreement that reflects the voluntary consent of both the alleged offender and the victim. Each party is entitled to legal representation by counsel during the process[29].
3. Formal Recording of the Agreement: The mediation agreement must be documented in an official record, which includes[30]:

– the identities and addresses of the parties;
– a summary of the facts;
– the date and place of the incident;
– the substantive terms of the agreement and deadlines for implementation.

This record must be signed by the Public Prosecutor, the court clerk, and the parties involved. A copy of the record shall be delivered to each party.

4. Mandatory Content of the Mediation Agreement: The agreement must, in particular, include the following:

- Restitution of the status quo ante: For example, in the offense of refusing to deliver custody of a child, the offender must return the child to the rightful guardian; or in the case of issuing a check without funds, the offender must pay the amount due to the victim.

- Monetary or in-kind compensation: For instance, in cases of intentional damage to property, the offender may agree to pay the victim an amount equivalent to the value of the damaged property[31].

Second – Legal Effects of Criminal Mediation:

The mediation agreement gives rise to a number of binding legal effects, including:

1. The Mediation Record Constitutes an Executory Instrument: In accordance with Article 65, the mediation agreement, once recorded, constitutes an executory title, which is binding upon the parties under the applicable legal framework.
2. Immunity from Appeal or Challenge: As provided under Article. 64the Code of Criminal Procedure, no appeal or challenge may be lodged against the mediation record by any party. The record is deemed an administrative act, not a judicial one, and the Public Prosecution acts in its administrative capacity when handling such agreements.
3. Suspension of Statutory Limitation Periods: Pursuant to Article67 , the execution of a mediation agreement suspends the running of the statute of limitations for public prosecution, for the duration specified in the agreement for its implementation.
4. Sanctions for Willful Non-Execution of the Agreement: Should either party—particularly the alleged offender—fail to execute the terms of the mediation agreement within the specified deadlines without just cause, he or she becomes subject to two forms of criminal liability:

Firstly, pursuant to the provisions of Article 37 bis 8 of the Code of Criminal Procedure, the Public Prosecutor retains the authority to initiate criminal proceedings for the original offense that constituted the subject matter of the mediation, in the event that the alleged offender fails to comply—without justification—with the terms of the mediation agreement within the stipulated timeframe. The non-execution of the agreement, in this context, nullifies the restorative rationale underlying the decision to forgo formal prosecution and reactivates the conventional prosecutorial pathway, restoring to the Public Prosecution its full prerogatives with respect to initiating judicial action.

Secondly, under Article 67 and 68Code, a separate and additional layer of legal accountability is imposed upon the defaulting party. In such instances, the individual who willfully refrains from implementing the terms of the mediation agreement may also be subject to prosecution under Article 147 of the Penal Code, which criminalizes the obstruction of the execution of official acts. This provision encompasses penalties designed to sanction conduct that seeks to undermine the authority or efficacy of legal instruments issued by public institutions, thereby reinforcing the binding nature and enforceability of the mediation process once formalized.

Together, these dual avenues of liability reflect the legislator’s intent to ensure that criminal mediation is not treated as a procedural loophole or informal arrangement, but rather as a structured and binding legal mechanism whose breach may trigger not only the revival of the original prosecution, but also the imposition of independent penal sanctions for non-compliance with an official prosecutorial act[32].

CONCLUSION:

The discretionary authority conferred upon the Public Prosecution to either terminate public action through archival decisions or to engage in alternative dispute resolution mechanisms, such as criminal mediation, represents not merely a procedural innovation but a fundamental paradigm shift in the philosophy and practice of modern criminal justice. This evolution is firmly anchored in the principle of *opportunité des poursuites*—the principle of prosecutorial discretion—which acknowledges that the decision to prosecute should not be an automatic consequence of a criminal offense, but rather a calculated determination grounded in legal, social, and pragmatic considerations.

At its core, this discretionary framework reflects an effort to optimize the deployment of judicial resources, reduce systemic congestion, and promote a more individualized and context-sensitive administration of criminal law. No longer confined to the rigid dichotomy of either prosecuting or dismissing a case, the Public Prosecution now assumes a multidimensional role: as a legal authority, a facilitator of restorative outcomes, and a strategic actor within the broader justice apparatus. This expanded role enhances its function as a custodian of both public order and individual liberties, ensuring that criminal proceedings are pursued only when they serve the interests of justice, social harmony, and the rule of law.

Through the archival mechanism, the Prosecution may lawfully abstain from initiating criminal proceedings where legal or factual impediments render prosecution either impermissible or unnecessary. This act, administrative in nature and devoid of judicial character, does not carry the force of res judicata and thus does not extinguish the rights of aggrieved parties, who may still seek redress through civil litigation or private prosecution, where permitted. The archival decision is therefore not a denial of justice, but rather a strategic procedural tool that balances institutional efficiency with legal fairness.

Concurrently, the incorporation of criminal mediation into Algeria's procedural framework has introduced a restorative justice model that emphasizes repair over punishment, dialogue over confrontation, and reconciliation over retribution. Mediation offers a voluntary, non-adversarial pathway to resolve conflict, particularly suited to offenses of lesser gravity, where traditional prosecution might prove disproportionate or socially disruptive. By facilitating mutual understanding, restoring the victim's rights, and encouraging the offender's reintegration into the community, criminal mediation reconfigures the prosecutorial process into a vehicle of social healing and legal responsiveness.

Taken together, the mechanisms of archival decisions and criminal mediation constitute a dual-layered prosecutorial arsenal, enabling the Public Prosecution to calibrate its interventions in accordance with the specificities of each case. This duality reflects an emerging prosecutorial rationality that privileges proportionality, equity, efficiency, and restorative potential. When exercised transparently and within the bounds of legality, this discretion not only reinforces the legitimacy of prosecutorial institutions but also enhances public confidence in the criminal justice system as a dynamic and responsive structure.

In sum, the contemporary prosecutorial mandate in Algeria has moved beyond its classical repressive function. It now embraces a pluralistic and pragmatic vision of justice, one that harmonizes the imperatives of legality with the nuanced realities of social conflict. This transformation marks a decisive step toward a more humanized, adaptive, and justice-oriented prosecutorial model, in line with international standards and evolving societal expectations.

Footnote:

1. Meki Ben Sarhan, *The Public Prosecution and the Principle of Opportunity in Instituting Criminal Proceedings*, Doctoral Dissertation in Public Law, Faculty of Law and Political Science, University of Saïda, 2019–2020, p. 192.
2. Dr. Dreesi Djamel, *The Public Prosecutor's Discretion Regarding Preliminary Evidence Without Referral to Trial*, *Annals of the University of Algiers 1*, Vol. 37, No. 2, June 2023, p. 52.
3. Dr. Amal Abdel Rahman Othman, *Explanation of the Code of Criminal Procedure*, General Egyptian Book Organization, Egypt, no date, p. 543.
4. Dr. Raouf Obeid, *Principles of Criminal Procedure in Egyptian Law*, Dar Al-Jeel Printing House, Egypt, 1985, p. 318.

5. Dr. Slimane Barche, *Explanation of the Algerian Code of Criminal Procedure*, Dar Al-Shehab for Publishing and Printing, Algeria, 1986, p. 159.
6. Ali Adnan Al-Feel, *Suspension of Criminal Proceedings in Military Law: A Comparative Study*, Houma Publishing, Algeria, 2003, p. 36.
7. Dr. Galal Tharwat, *Criminal Procedures: Criminal Proceedings*, University Press House, Alexandria, 2002, p. 505.
8. Dr. Abdel Fattah El-Saifi, Dr. Fatouh El-Shazly, Dr. Ali El-Qahwaji, *Principles of Criminal Trials: Pre-Trial Procedures – Trial and Appeals Procedures*, University Press, Beirut, no date, p. 69.
9. Article 139 of the Algerian Code of Criminal Procedure stipulates: "Preliminary investigation is mandatory in felony cases, optional in misdemeanor cases unless otherwise provided by law, and may be conducted in contraventions if requested by the public prosecutor."
10. Meki Ben Sarhan, *ibid.*, p. 215.
11. Dr. Dreesi Djamel, *ibid.*, p. 59.
12. Ali Chemlal, *Recent Developments in the Explanation of the Code of Criminal Procedure, Volume I (Investigation and Accusation)*, 3rd ed., Houma Publishing, Algeria, 2017, p. 64.
13. Dr. Omar Khoury, *Recent Developments in the Explanation of the Code of Criminal Procedure, Volume I (Investigation and Accusation)*, 3rd ed., Houma Publishing, Algeria, 2017, p. 15.
14. Dr. Dreesi Djamel, *ibid.*, p. 60.
15. Dr. Chemlal Ali, *ibid.*, p. 25.
16. Dr. Galal Tharwat, *ibid.*, p. 404.
17. Dr. Ali Chemlal, *ibid.*, p. 72.
18. Dr. Raouf Obeid, *ibid.*, p. 323.
19. Dr. Ahmed Fathi Sorour, *Al-Wasit fi Qanun Al-Ijra'at Al-Jina'iyya (The Treatise on the Code of Criminal Procedure)*, Vol. 1, 10th ed., Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 772.
20. Dr. Abdel Fattah El-Saifi, Dr. Fatouh El-Shazly, Dr. Ali El-Qahwaji, *ibid.*, p. 70.
21. Unlike the mediation procedure for adult suspects, in juvenile cases it may be initiated upon the proposal of the public prosecutor or at the request of the child, their legal representative, or attorney (Article 111, para. 2 of Law No. 15/12).
22. Dr. Dreesi Djamel, *ibid.*, p. 54.
23. Dr. Mohamed Taha Galal, *The Foundations of Criminalization and Punishment in Contemporary Criminal Policy: A Study in the Strategy of Penal Sanctions and the Decriminalization Phenomenon*, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 431.
24. Dr. Oqba Larzak, *Rules of Criminal Mediation in Algerian Legislation*, *Journal of the Voice of Law*, University of Khemis Miliana, Vol. 6, No. 2, November 2019, p. 13.
25. Law No. 15/12 dated 15 July 2015 on the Protection of the Child, *Official Gazette* issued on 19 July 2015, No. 39.
26. Dr. Dreesi Djamel, *ibid.*, p. 55.
27. Rami Metwally Al-Qadi, *Criminal Mediation as an Alternative to Public Prosecution: An Analytical Comparative Study in French Law and Arab Legislation*, *International Journal of Jurisprudence, Judiciary and Legislation*, No. 1, 2021, p. 220.
28. Mediation is permissible in all misdemeanors and contraventions except felonies when the suspect is a child, in accordance with Article 110 of Law No. 15/12 dated 15 July on the Protection of the Child.
29. See Articles 37 bis 2 and 37 bis 1 of Law No. 15/02, aforementioned.
30. See Article 37 bis 4 of Law No. 15/02, aforementioned.
31. Dr. Ali Chemlal, *ibid.*, p. 54.
32. In cases where the mediation agreement is not executed within the agreed period for a child suspect, the public prosecutor shall initiate prosecution proceedings.

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9. Mohamed Taha Jalal, *Usul Al-Tajrim wa Al-'Iqab fi Al-Siyasa Al-Jina'iyya Al-Mu'asira* [Foundations of Criminalization and Punishment in Contemporary Criminal Policy], Dar Al-Nahda Al-Arabiya, Cairo; 2005.

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10. Meki Ben Sarhan, *The Public Prosecution and the Principle of Expediency in Initiating Public Action*, Ph.D. Thesis in Public Law, Faculty of Law and Political Science, University of Saida; 2019–2020.

C - Articles:

11. Dreesi Jamal, *The Public Prosecutor's Disposition of Investigation Results without Judicial Referral*, *Annals of the University of Algiers 1*, Vol. 37, No. 2, Algiers; June 2023.

12. Aqqab Larzeg, *Legal Provisions of Criminal Mediation in Algerian Legislation*, *Journal of Law Voice*, University of Khemis Miliana, Vol. 6, No. 2, Algeria; November 2019.

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16. Ordinance No. 15-02 of 23 July 2015, amending and supplementing Ordinance No. 66-155 of 8 June 1966 on the Code of Criminal Procedure; Algeria.

17. Law No. 15-12 of 15 July 2015 on the Protection of the Child, *Official Gazette*, No. 39; 19 July 2015.