



## **Scope of Application of Criminal Mediation in Criminal Matters**

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### **Abstract**

The importance of the scope of criminal mediation stems from the general principles of criminal law, especially the principle of criminal legality, and that there is no punishment or crime without a text. Legal logic requires the designation of a criminal circuit in which the criminal mediation system is applied, considering it as a procedural system legislated to simplify, concise, and expedite the resolution of the case completely, abbreviating the rules followed in a regular criminal trial. It is based on different rules, which raises a question about the nature of the crimes subject to the application of criminal mediation. It is worth noting that it does not apply to all types of crimes, but rather to a specific group of them characterized by characteristics consistent with their nature. Therefore, the legislator who will adopt the mediation system in criminal matters must limit its scope to a specific area, preferably misdemeanors and violations, and attempt to reduce criminal offenses, as there is no way to achieve it in this regard except by following the regular rules, due to their balance between rights, freedoms, and justice.

**Keywords:** Criminal Mediation, Criminal Lawsuit, Mediator, Victim, Scope.

### **1. Introduction**

Most economic and financial crimes that affect a country's economy require a different approach. It is best to end the resulting disturbances by adopting a conciliatory approach and reaching amicable solutions between the parties involved. The law reflects the will of society, which seeks not to exclude the possibility of reform in some crimes, especially those that do not require recourse to traditional judicial methods, such as family crimes.

These crimes may increase in frequency as a result of the imposition of penalties on their perpetrators. This can only be achieved by activating practical mechanisms and devising alternatives aimed at reform and based on mutual consent.

### ***Research objectives***

To solve the research problem and achieve the desired goal, several modern jurisprudential trends have emerged in recent years calling for the regulation of new crimes and the definition of non-traditional penalties that are consistent with the objectives of punishment, according to the vision of contemporary criminal jurisprudence. Criminal mediation certainly meets these needs, as it is considered a modern mechanism approved by comparative legislation for resolving criminal disputes.

## **2. Research Methodology**

This study adopts the descriptive analytical research method through extrapolation of previous studies, legislation, and applications of Arab and foreign systems of the criminal mediation system.

## **3. Results**

### ***Mediation parties***

Mediation relies on the intervention of a third party who acts as an intermediary between the victim and the defendant, and is based on the principle of mutual consent. This is what we will address in the following sections.

#### *Personal scope of the mediation application*

The personal scope of criminal mediation consists of the parties to the criminal mediation: the victim and the defendant, and a third party, the mediator. The mediator acts as an independent and neutral party, reconciling viewpoints through discussion and encouraging dialogue to reach a solution to the dispute between the two parties. Therefore, we will discuss three points of view to define the parties to criminal mediation and the conditions that must be met by each party.

**The Mediator:** The criminal mediation system is characterized by a three-party relationship involving the perpetrator, the victim, and the mediator. The mediator is the essential and distinctive element in this mediation, representing a neutral party who manages the process of reaching an agreement to resolve the dispute between the victim and the perpetrator. Therefore, we will examine the definition of a mediator, the conditions they must meet, and their role in the mediation process.

The mediation process is conducted by a mediator who aims to assist the parties involved in resolving the dispute and repairing the harm caused to the victim. The mediator supports the parties in making decisions about how to address the harm.]1, p. 21[

A mediator is a person who mediates between the interests of the accused and the victim. In other words, he or she must meet certain conditions to perform this task.

In some areas of jurisprudence, it has been defined as the supervisor, coordinator, monitor, and principal actor in the criminal mediation process from beginning to end. The mediator is considered a neutral third party who intervenes to resolve the existing dispute, and in this task, he or she is subject to the oversight of the judicial authority.]2p. 48[

The legislator plays an important role in determining the mediator, perhaps assigning this task to the Public Prosecution. This view is correct, as the Public Prosecution undertakes the task of mediation in judicial contexts. However, anyone who examines procedural legal systems around the world will witness a decline in reliance on the popular accusatory system, which has allowed the Public Prosecution to occupy an alternative position, as the law has granted it a set of diverse powers, whether criminal or administrative, that reflect its role as a protector of rights and freedoms, and a representative of society to ensure its security, protect the lives and property of its individuals, and achieve justice among them.

The condition of neutrality is considered one of the basic and important conditions that the mediator must adhere to in order to achieve the main goal of mediation, which is to settle the dispute in an amicable manner away from the judiciary. This condition requires the mediator to stand at an equal distance between the two parties to the dispute, taking into account the principle of equality between them.7, pp. 129-130The condition of neutrality is manifested in the mediator having no interest in the subject of the dispute.8, p.149[

It also requires that the mediator not favor one party at the expense of the other, in order to ensure the integrity of criminal mediation.6, p. 80[It is necessary that the mediator be independent and not influenced by any interest, and not receive any information or directions from any of the parties.]5, p. 300[In a way that makes him an agent for someone, because one of the most important results of neutrality and independence is strengthening the legal and psychological confidence of the two parties to the dispute in

the mediator's work, and this confidence is considered a basic goal that cannot be neglected.]5, p. 50[

Another requirement is jurisdiction, which means that the mediator must be qualified to resolve the criminal dispute. This jurisdiction can be determined based on the jurisdiction of the judicial authority handling the criminal case, which refers the case to the mediator. The requirement of competence is considered absolute and non-specific in its meaning. A person may be considered competent as long as they are connected to the subject of the criminal dispute. The standard used to assess this connection is the extent of the mediator's academic or practical experience, in addition to the mediator's understanding of mediation literature and his or her ability to manage meetings between the parties to the dispute with the aim of achieving the desired objectives.

However, the concept of independence, neutrality, and competence of the mediator does not mean that he enjoys complete freedom while managing the criminal mediation process, as his actions are subject to the supervision of the judicial institution, which verifies the availability of these concepts and conditions before the mediation process begins, and approves its conclusion.2, p. 51[

### ***The Mediator's Mission in Mediation Negotiations***

In managing the criminal mediation process, the mediator undertakes two main tasks: the primary task and the secondary task. The primary task stems from the nature of the mediator's work, as he seeks to facilitate understanding between the parties to the dispute by establishing controls and conditions for managing the dialogue with the aim of reaching an amicable solution. To ensure the mediator's success in this task, he must adhere to the principles of integrity and confidentiality in transmitting information between the parties involved. However, the information received by the Public Prosecution regarding the progress and procedures of the mediation, which is documented in a confidential report, does not conflict with the mediator's duty to maintain confidentiality. If the mediation fails, the mediator must refrain from informing the Public Prosecution of any information that may be used against one of the parties in subsequent legal proceedings.[\*]

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\*Decree No. (96/305) issued on 4/10/1996 considers Article (15-5-d) of the French Code of Criminal Procedure.

As for the sub-task this is considered far removed from the nature of the mediator's work, as the mediator undertakes this task when the Public Prosecution decides not to initiate a criminal case and instead conducts mediation and reconciliation with the offender. In this case, the Public Prosecution may appoint the mediator to assume the responsibilities of following up on the implementation of the mediation and reconciliation, in addition to following up on the offender regarding the fulfillment of his obligations or guiding him towards his health, professional or social rehabilitation. There is no dispute that the mediator's undertaking of these tasks does not fall within the scope of his job in criminal mediation, as it overlaps with some of the duties and functions of the judiciary based on the will of its representatives.<sup>2</sup>, p. 45[

### ***The victim***

Criminal mediation may also be conducted at the request of the victim, as they are a party to the criminal mediation. We will explain the definition of victim and its conditions.

The neglect of positive legislation to provide an explicit and precise definition of the term victim has led to its use varying from one legal system to another, and from one jurist to another. The existing jurisprudential debate about who falls within this category places lawyers and the judiciary before numerous and diverse options, especially with the latter approaching terms that are almost identical to them in concepts and meanings; however, they differ in the legal effect resulting from their application in the procedures subsequent to the occurrence of the crime. This is what makes us address the definition of the victim in order to clarify the issue of differentiating between the term victim and similar terms, and then after that we explain the guarantees that the mediation procedure provides to the latter.

Criminal law practitioners are moving toward strengthening the right of crime victims to fair and accessible compensation. The focus on compensating the injured victim is considered the second pillar of victimology, while the first pillar is concerned with the victim's personality and their role within criminal proceedings, the criminalization process, and punishment.<sup>9</sup>p. 270[ This shift in focus from the perpetrator to the victim has begun, with the focus then shifting to the victim's right to compensation rather than the victim himself.

The victim of a crime is considered a party who is not given due importance except through what is stipulated in the general rules of criminal procedure. The absence of an explicit text defining a clear concept of who is considered a victim makes it difficult to

define this concept, which necessitates research into various legal texts of a criminal nature. It is well known that substantive and formal criminal rules are those texts that define procedures, criminalize acts, and determine the penalties prescribed for them, in application of the principle of legality. .

The term "victim of a crime" is defined as a natural or legal person who has suffered harm as a result of a crime, whether this harm is total or partial. A victim of a crime is a comprehensive concept that also includes the civil plaintiff, who represents any person who has suffered personal harm as a result of a crime, whether a felony, misdemeanor, or violation. The harm incurred may be material, physical, or moral. Anyone who has suffered harm related to the act of the crime that constitutes its material element is also considered a victim.<sup>10</sup>, p. 556[

In addition to the terms victim, injured party, and civil plaintiff, there is another term, the victim, which differs from the term victim. The victim is the person whose interests have been violated as a result of the crime, or who has suffered harm of any kind, which is considered a criminal result of the crime.

We conclude that the term "victim" and its definition in the context of criminal mediation are broad. It is better to use the term "complainant" instead of "victim", in order to ensure consistency between the legal positions of the parties and the stage of the case.<sup>11</sup>, p. 90[

#### *Victim's conditions*

The injured party, whether a natural or legal person, must have suffered personal and direct harm as a result of the crime. Therefore, no person has the right to claim compensation for harm caused to another person as a result of the crime, regardless of their relationship or degree of kinship, unless they prove that they have suffered personal and direct harm. This is where the difference between the victim and the plaintiff becomes clear.

While the victim includes anyone who has been harmed without there being a direct attack on the interest protected by the criminal text.<sup>12</sup>, p. 367In other words, the victim differs from the victim in that the victim must achieve the result intended by the perpetrator even if he did not suffer direct harm, while the victim is the person who was harmed by the crime, whether he was the direct victim, another person who intervened to prevent the crime, or other people who were dependent on the victim and were harmed as a result of what happened to him.

It is important to note that the person considered a victim must have full capacity to enter into contracts, meaning that they must be fully competent. Some jurists point out that criminal mediation is considered a contract resulting from the agreement of the wills of the perpetrator and the victim. Therefore, the capacity required in criminal mediation is the capacity to contract civilly.

Therefore, the victim must have contractual capacity, which means that he must be of legal age to be able to initiate mediation proceedings.<sup>13</sup>, p. 410[

Mediation, in accordance with the principles of restorative justice, seeks to enhance victim participation in the pursuit of justice. Through mediation, the parties most directly affected by harm come together in the pursuit of healing, recovery, accountability, and prevention. Criminal mediation may take place at the victim's request when the crime falls within the criminal mediation system.

The victim plays a crucial role in the success or failure of mediation negotiations. The other parties to the conflict must respect the victim by receiving them well and listening to them. Mediation aims to strengthen social ties and establish social peace. The victim has the right to restore their reputation through fair and acceptable compensation from the defendant. The public prosecutor must work with both parties to the conflict to reach a solution that satisfies them both and ensure that the victim has returned to the social status they held before the crime.

### ***Responsible***

Criminal mediation also takes place at the request of the official, who is the primary beneficiary of the parties involved in criminal mediation. We will review the definition of the official and its conditions.

#### *Definition of Responsible*

The perpetrator is the person who commits the crime, whether as a principal or an accomplice.<sup>14</sup>, p. 261[It is known as the person who committed an act that constitutes the elements of a specific crime.]<sup>15</sup>, p. 382] and is defined in some aspects of jurisprudence as every individual who committed a crime and was eligible for responsibility at that time, as he had a valid will that was directed towards an act contrary to the law.<sup>16</sup>, p. 328[

Mediation requires the consent and willingness of the offender, as mediation cannot be carried out without their consent. The offender is considered a key party to the process and has the right to accept an amicable resolution of the dispute. He may also refuse

mediation and choose to have the usual criminal proceedings taken against him. However, experience shows that such refusal is rare, especially if the offender has already committed the criminal act.<sup>17</sup>, p. 67[

Some require that the offender confess to the crime they committed in order to initiate criminal mediation. It is difficult to imagine someone accepting mediation without confessing to the crime. However, this view is criticized, as the offender may not confess to the crime or object to it, but accepts mediation because its procedures are easier and more secure than a criminal case. Therefore, the offender's confession to the crime during mediation is not considered evidence against him if the mediation process fails and a criminal case is filed. This was emphasized by the Third Conference on Penal Law, held in Cairo in 1984.<sup>18</sup>, p. 373[

#### *Responsible Terms*

A set of conditions must be met by the offender to be eligible for criminal mediation. These conditions are as follows:

1. The perpetrator must be alive, as in the event of the perpetrator's death, mediation cannot be resorted to, given that the criminal case expires with the death of the accused.<sup>19</sup>[
2. The offender must be a known and identified person, as he or she is required to be present or represented during the criminal mediation process, and therefore mediation cannot take place if the offender is anonymous.<sup>20</sup>, p. 113[
3. The perpetrator must be either a natural or legal person, as some criminal legislation indicates that legal persons may bear criminal liability, as is the case in Iraqi Penal Code No. 111 of 1969, as amended. Therefore, mediation may take place between the victim and the legal person, with the legal person's representative being directed to the legal person's representative.<sup>21</sup>[
4. The offender must have criminal capacity to participate in criminal mediation, which means he or she must be an adult who has reached the age of 18. Failure to meet this requirement does not invalidate the mediation; rather, it presents another means of handling the case.<sup>22</sup>, p. 167[
5. The offender must have no criminal record, meaning he must not be a repeat offender, as the goal of mediation is to reform and rehabilitate the offender. Therefore, this mediation is applied to low-risk and novice offenders. Therefore, habitual offenders and those with a history of criminal activity cannot be subjected

to the criminal mediation system; rather, methods must be used that are commensurate with their criminal risk.<sup>23</sup>, p. 115[ Therefore, all of the above conditions must be met for the offender to be eligible to benefit from mediation.

### ***The Scope of Criminal Mediation in Terms of the Type of Crime in Iraqi And Syrian Law***

Mediation can be applied to all types of crimes, but specific types of crimes are excluded in practice. Therefore, we will address this in two sections: the first, the scope of mediation in terms of the type of crime, and the second, the scope of mediation in Iraqi and Syrian law.

#### *Scope of mediation in terms of the type of crime*

There are three types of crimes: felonies, misdemeanors, and contraventions. We'll explore the extent to which criminal mediation can be applied to each type in turn.

#### *Scope of Mediation in Criminal Cases*

Felony is the most dangerous type of crime because of its significant impact on society, individuals, and the state as a whole. Therefore, it must be carefully considered when it occurs and in order to find a solution for it. Most of those who adopt criminal mediation rule out the application of felonies, for several reasons that we will discuss in turn:

#### *The Necessity of a Fair Trial in Criminal Cases*

The goal of criminal procedure is to ensure access to criminal justice, which is achieved by revealing the facts and establishing the state's right to punish, provided that this goal must be within the framework of a balance between the public interest and rights and freedoms.<sup>24</sup>, p. 260[

Since the state's right to punish involves infringement on a serious matter such as the life and freedom of the accused in the criminal field, it is a right that can only be established or embodied by a competent authority that has the right to initiate public action, namely the Public Prosecution, which undoubtedly has an inherent right derived from the judiciary, given that it is the natural guardian of rights and freedoms.

It is the duty of the judiciary not to be limited to recognizing rights, but to go beyond that to give these rights effectiveness and application through a judiciary that is in turn subject to the law.<sup>25</sup>, p. 3[

We can rely on a fundamental principle, which is the origin of rights and freedom, which is embodied in the fact that man is innocent, since crimes are generally traditional crimes

that human society suffers from within the framework of human civilization that has prevailed throughout the ages.

Felonies are crimes that by their nature affect public order and the public interest, and the Public Prosecution must proceed with them and initiate criminal proceedings, as it represents society in combating crimes and holding their perpetrators accountable.<sup>12</sup>, p. 165[

Here we can say about the idea of excluding crimes related to public order from the scope of criminal mediation, since the latter creates a problem between two natural individuals, not between an individual and a society represented by the state through the public prosecution under the title of public right. There is a group of crimes in which the protected interest is considered to be the protection of public order, such as traffic crimes, but a section of jurisprudence believes that this group of crimes should be excluded from the possibility of applying the mediation system in them.<sup>12</sup>, p. 339[

#### *The impossibility of applying mediation to felonies*

Felonies are the most serious type of crime, requiring a punishment that is sufficient to deter the perpetrator. To achieve this goal, there must be a balance between the applicable punishment and the seriousness of the crime. The greater the harm caused by the crime, the more severe the punishment. On the other hand, there must be a proportionality between the punishment and the gravity of the criminal's sin.

The penalty imposed on an offender when he committed an act with intent is more severe than the penalty imposed on him for error in the event of a court ruling on any felony. Under no circumstances will the judiciary accept simplification or waiver of prosecution procedures under any circumstances or for any reason, otherwise the balance of justice in society would be undermined.

From here it appears that there is no room for applying criminal mediation in felonies, as most legislations, with their various systems, have decided to exclude the conduct of criminal mediation in the scope of felonies, except for [the French legislator], misdemeanors of high seriousness, and simple misdemeanors that do not constitute a great danger to society.<sup>26</sup>, p. 339[

#### *In misdemeanors and violations*

The pursuit of simplicity and speed is in itself a fundamental goal for achieving maximum effectiveness in criminal justice. Criminal mediation is one of the procedural systems applicable to misdemeanors and violations. Most legislation has followed this principle.

For example, the Algerian legislature has defined the scope of mediation as encompassing all misdemeanors committed by children, including all violations.

It is natural that criminal mediation is an exception to the general rules established by the legislature to limit crimes, as it represents an expansion of the scope of application of the rules. For example, offering a settlement to the accused is an exception to the rule that criminal proceedings must be initiated in all crimes.

The Tunisian legislator has gone in the same direction when he specified the scope in which mediation settlement is applied in crimes stipulated exclusively in Article [335] Third of the Tunisian Code of Criminal Procedure, as this article stipulates that mediation settlement is offered to the one who is harmed and the accused, and that the act attributed to the latter is a violation or misdemeanor covered by the articles related to it.<sup>27</sup>, p. 5[

It is worth noting that there are legislations that do not limit the crimes subject to mediation to only misdemeanors and offenses, similar to American legislation, as the scope of criminal mediation applied in the United States of America, which differs from what is practiced in Latin American systems, is not limited to crimes that are serious and minor, and includes some serious crimes such as murder and rape, even though this is not correct in legal logic, since the harm extends to society; however, the scope of its application is achieved in most misdemeanors. For example, misdemeanors represent 69% of crimes subject to mediation, while felonies do not exceed 30%.<sup>28</sup>, p. 536[

Anyone who tracks misdemeanors that could be subject to seriousness affecting public order and whose negative effects or harm are limited to the parties are said to be minor misdemeanors, and most of them relate to disputes in which mediation can be considered a means of reconciliation between the parties and instead of initiating a criminal case that could expose the accused to penalties depriving of liberty, its harms are not hidden, and those misdemeanors can be financially compensated to redress the resulting damage, and the offender can restore the situation to what it was before the crime occurred. Bahraini law has followed this approach, as it has limited the scope of application of criminal mediation to misdemeanors that are not related to public order, while completely removing felonies from the scope of application of criminal mediation and has limited the scope of application of criminal mediation to some crimes in which reconciliation and conciliation are possible. Article Two of Resolution No.2For a year2022The law regulating criminal mediation specifies the crimes in which criminal mediation can be applied,

namely crimes in which reconciliation and settlement are possible, or crimes of complaint.

### ***Proposed Scope of Application of Criminal Mediation in Iraq and Syria***

In our endeavor to implement the criminal mediation system in Iraqi and Syrian legislation, we will present the foundations that the legislation followed to determine the scope of mediation, and the extent to which it can be applied in Iraqi and Syrian law.

Criminal legislation varies in defining the scope of crimes subject to criminal mediation. Some legislation adopts an exclusive enumeration system to define the crimes covered by mediation, while others follow a general rule system to define the substantive scope of criminal mediation. Other legislation does not clearly define the scope of criminal mediation.

#### *Exclusive census system*

This system represents the method adopted by the criminal legislator to exclusively define the crimes to which mediation can be applied, without granting discretion to the competent judicial authority to determine the suitability of criminal mediation to resolve the dispute arising from the crime charged. The wisdom in defining these crimes exclusively lies in the fact that they represent an exception to the general rules established by the legislator, which requires this exception to be applied within the narrowest possible scope and without expansion. This system is characterized by the uniformity of handling similar charges before multiple judicial authorities.<sup>29</sup>, p. 36[

Among the criminal legislations that have adopted this system is the Tunisian Code of Criminal Procedure, where the Tunisian legislator has defined the scope of application of mediation to include violations and some misdemeanors.

Therefore, the scope of criminal mediation under the aforementioned laws is limited to misdemeanors that are not considered serious, or in which the victim is harmed more than society, in addition to violations.

This system is criticized for its rigid nature, which hinders the achievement of the goals of criminal mediation, as it is not permitted to be applied outside the scope of crimes specified in the legal texts, although it may be permitted.

The competent judicial authority may consider the incident before it to be resolvable through mediation if the resulting damage is minor and reparable, does not affect public order, the accused does not have a criminal record, and the parties involved are satisfied to resolve the dispute through criminal mediation.

However, the crime charged is not among those listed by the legislator, which makes the judicial authority the most capable of determining the suitability of the mediation system to end the existing dispute.<sup>29</sup>, p. 37[

#### *General rule system*

The general rule system is considered the standard established by the criminal legislator to define a general rule through a specific officer, with the aim of identifying the crimes that may be subject to a specific system. This system is adopted in most criminal and legislative procedures, embodying the principle of equality before the law.<sup>12</sup>, p. 160[

There are several laws that have adopted the general rule system in determining the scope of criminal mediation, such as Portuguese law and Belgian law. The Portuguese legislator defined the scope of application of criminal mediation in Article(2)From the Portuguese Criminal Mediation Law No. 21 of 2007, this is limited to complaints crimes, i.e. crimes for which criminal proceedings can only be initiated based on a complaint from the victim.

In Belgian law, the legislator has defined the scope of application of criminal mediation based on the severity of the penalty prescribed for the crime in accordance with the provisions of the law. Mediation applies to crimes whose penalty does not exceed two years' imprisonment, Article (10)This means that the scope of mediation is limited to misdemeanors and violations.

Regarding the scope of criminal mediation in German law, it is limited to minor crimes of limited seriousness that do not significantly impact society. Therefore, the scope of application of mediation is limited to these minor crimes, where compensation for the victim is sufficient.<sup>30</sup>, p. 154[

One criticism of this system is that it leads to discrepancies in procedures between different judicial bodies, as each body has broad powers to determine which facts are subject to mediation and which follow regular litigation procedures. This can lead to two cases with similar facts, one of which is referred to mediation while the other is processed as a criminal case.<sup>31</sup>, p. 43[

This argument can be countered by the fact that the differences in procedures between different judicial authorities are considered a normal practice in dealing with any crime brought before them. The judicial authority's power to dismiss case files due to lack of importance or insufficient evidence unequivocally leads to differences in practices between judicial authorities.

No one has criticized the granting of this power to judicial bodies, whether the Public Prosecution or the investigating authorities. Indeed, the rulings issued by the judiciary may vary in the penalties imposed for a single act, ranging from severe penalties to minor penalties or even suspended sentences. This difference in rulings issued for similar incidents has not been subject to any criticism. On the contrary, the difference in criminal treatment between incidents, despite their similarity, is considered a positive matter that achieves the principles of justice and fairness, as long as it is consistent with the circumstances surrounding the perpetrator, the extent of his criminal danger, and the extent of the damage resulting from the crime.<sup>30</sup>, p. 38[

We support adopting the French standard, which is the general rule standard, and not following the exclusive standard in determining the crimes to which mediation applies, especially after the criminal legislator neglected the issue of determining the crimes subject to the scope of mediation. This was criticized by French jurisprudence, and this matter prompted the French government to respond to the call of jurisprudence to define the objective scope of mediation for misdemeanors and violations without felonies, in accordance with what was stated in the French draft Code of Criminal Procedure of 2010.. If we look closely, we find that Iraqi and Syrian legislators have adopted the exclusive criterion in the reconciliation system, so they have exclusively defined the crimes that are considered subject to reconciliation. In order to achieve an optimal application of the criminal mediation system, a criterion must be determined to be relied upon as a general rule system in determining the nature of crimes that fall within the objective scope of criminal mediation. If we look at the criminal legislation that followed the general rule system, we note that most of them adopted simple crimes with little danger that do not result in any serious harm to society. This means that their standard is the general rule system and the criminal danger criterion, which is the criterion upon which to assess the level of suitability of criminal mediation to resolve a dispute.

The definition of the concept of criminal danger has caused disagreement among jurists and the criminal legislations that have adopted this concept have taken it into their law.<sup>32</sup>, pp. 22-23[

The Iraqi legislator has shown us the emirates from which criminal danger can be deduced pursuant to Article(1/103)From the Iraqi Penal Code, these signs may be material and related to the criminal act and its seriousness, or they may be personal signs related to the person of the perpetrator, his circumstances, and all the circumstances

surrounding him. If it is difficult to discover the existence of these signs, then the assumption of that seriousness is an assumption that cannot be proven otherwise, in order to eliminate the difficulty of proof.

### ***Proposed Idea***

The objective scope of criminal mediation in Iraqi and Syrian legislation is limited to minor crimes, where the victim may be compensated for the harm caused by the crime, in addition to reforming and rehabilitating the offender and restoring the situation to its previous state. Therefore, the scope of criminal mediation is limited to minor misdemeanors and violations.

In these crimes, it is easy to compensate the victim, in addition to the low criminal risk of the person who commits the crime, so the perpetrator does not need to be exposed to the risk of imprisonment.

Among the crimes that can be subject to criminal mediation, for example, are crimes related to the family, such as domestic violence. Criminal mediation can be conducted in crimes of domestic violence, crimes related to paternity, the care of minors, exposing children and the elderly to danger, and abandonment, as stipulated in Articles(3382 and 384)Syrian law does not mention crimes related to domestic violence, except for abortion crimes stipulated in Articles 526-544.

Mediation may also be conducted in simple assault crimes stipulated in Articles(2/412)and(1/413)and(415)and(1/416) Its equivalent in Syrian law is the following articles:(533,525,532)And the crimes of killing and harming animals stipulated in Article(485)It corresponds to Article 728 of the Syrian Code..

### **Conclusion**

Criminal mediation is an effective tool that judicial bodies can rely on to alleviate the criminal justice crisis, as it contributes to reducing litigation costs and alleviating the heavy burden on the judiciary by resolving the numerous and mounting backlog of cases. Mediation in criminal cases gives both the victim and the defendant an effective role in resolving the criminal dispute, under the supervision of the mediator. This procedure aims to repair the damages resulting from the criminal act to which the victim was subjected, thus contributing to the conclusion of the public lawsuit at the lowest cost and in the fastest possible time, based on the agreement reached in the mediation report.

A penal mediation agreement concluded between the parties under the supervision of a mediator is only valid if it meets all the necessary conditions for its establishment, whether substantive or procedural. This requires the parties' acceptance of the agreement, and the subject matter of the mediation must be amenable to reconciliation. The agreement must also have the appropriate form and content to achieve its purpose, which is to end the breach resulting from the crime or compensate for the damages resulting from it. Criminal mediation is a modern approach to resolving criminal disputes, departing from traditional methods and procedures of criminal litigation. It helps avoid the difficulties and complexities of litigation. Mediation aims to enhance communication between the parties to a dispute, particularly in minor and less serious crimes.

### **Recommendations**

1. We propose to the Iraqi and Syrian criminal legislators to amend procedural legislation in line with the requirements of modern criminal policy, in order to eliminate the current criminal justice crisis afflicting Iraqi and Syrian societies. We also seek to achieve criminal and social justice by adopting alternatives to criminal litigation, such as the criminal mediation system, which represents an alternative method for resolving criminal disputes. This requires the addition of new legal texts to the Code of Criminal Procedure, in addition to the articles related to reconciliation.
2. We recommend that Iraqi and Syrian legislators, if they adopt a criminal mediation system, establish a legislative framework that clarifies the concept of mediation and defines its objective scope. This framework should be based on the criteria of the seriousness of the crime and the simplicity of the resulting harm, through a clear legal text. The procedures related to mediation should also be defined, as well as the role of the mediator and the mechanism for their preparation and selection. The conditions required of the mediator, the duration of the mediation process, and the consequences of its success or failure should also be specified.
3. We suggest that the Iraqi legislature, if it adopts the criminal mediation system, define its scope to include minor crimes and misdemeanors—those crimes in which the victim can easily be compensated, the damage repaired, and the situation restored to its previous state.

## References

- [1] Blanc: Lamediation penal commentaire de article, dla (2) Lainog 3 – 2 du Jannies 1993 portantre formedela penal procedure tla. Samaine jurudique. JCO ed, 1994.
- [2] Adel Ali Manea, Mediation in Resolving Criminal Disputes, Journal of Law, Kuwait University, Issue 4, 2006.
- [3] Bahloul Samia, Center for the Institution of the Public Prosecution, Journal of Judicial Reasoning, Vol. 12, No. 2, 2019, Algeria.
- [4] Babsil Yasser bin Mohammed Saeed, Criminal Mediation in Contemporary Systems (Analytical Study), a thesis submitted for a master’s degree, Naif Arab University for Security Sciences, Riyadh.
- [5] Abu Al-Khair Abdel-Azim, Mediation in Dispute Resolution: A Practical Alternative to Overcoming Litigation Problems, First Edition, National Center for Legal Publications, Cairo, 2017.
- [6] Al-Damiati, Muhammad Salah Abd al-Raouf, Alternatives to Criminal Prosecution and Its Role in Achieving Justice in Palestine, Master's Thesis, Faculty of Sharia and Law, Islamic University of Gaza, Palestine, 2013.
- [7] Soufiane Soualem, Alternative Methods for Resolving Civil Disputes in Algerian Law, PhD Thesis, Faculty of Law and Political Science, University of Mohamed Khider, Biskra, Algeria, 2013/2014.
- [8] Musa Adnan Hamid, “Limiting Criminalization and Punishment in Iraqi Law - A Comparative Study,” Master’s Thesis, College of Law, University of Baghdad, 2019.
- [9] Qamidi Muhammad Fawzi, Victimology and its Contributions to the Criminal Field, Matun Magazine, Dr. Moulay Taher University, Saida, Volume 9, Issue 4, 2018.
- [10] Hosni Mahmoud Naguib, The General Theory of Criminal Intent, Dar Al Nahda Al Arabiya, Cairo, 1998.
- [11] Ahmed Mohamed Yahya Ismail, Criminal Order and Reconciliation in Comparative Procedural Systems, Cairo, 1985.
- [12] Judge Rami Metwally, Mediation in Comparative Procedural Criminal Law, 1st ed., no publishing house, no country of publication, 2010.
- [13] Hatem Mohamed Abdel Rahman Mohamed Attia, The Role of the Victim in Ending the Criminal Case, PhD Thesis (Unpublished), Cairo University, 2014.
- [14] Sorour Ahmed Fathi, The Mediator in Penal Law, 6th ed., Dar Al Nahda Al Arabiya, Cairo, 1996.

- [15] Salama Mamoun Muhammad, *Criminal Procedures in Egyptian Legislation*, Second Edition, Dar Al Nahda Al Arabiya, Cairo, 2000.
- [16] Al-Khalaf Ali Hussein and Al-Shawi Sultan Abdul Qadir, *General Principles of Penal Law*, 1st ed., Al-Sanhouri Library, Baghdad, 2015
- [17] Awsaj Ibrahim Khalil, *Legitimate Criminal Mediation*, a study published in the Anbar University Journal of Legal and Political Sciences, Issue No. 5, February 2012.
- [18] Al-Ajeel Mansour Abdel Salam Abdel Hamid, *Consensual Justice in Criminal Procedures - A Comparative Study*, PhD Thesis, Faculty of Law, Cairo University, 2016.
- [19] judge honest Jaafar Al-Anbari, *law Origins Trials Penal Iraqi number23For a year1971and its amendments*, year Publishing2012.
- [20] Ubaid Raouf, *Principles of Criminal Procedure in Egyptian Law*, Thirteenth Edition, Dar Al-Jeel Printing, Cairo, 1979.
- [21] judge honest Jaafar Al-Anbari, *law Penalties Iraqi number111For a year1969and its amendments*, year Publishing2000.
- [22] Ahmed Abdel Rahman Atef Abdel Rahman, *Criminal Mediation and its Role in Ending and Privatizing Criminal Cases - A Comparative Study between Positive Law and Islamic Sharia*, PhD Thesis, Faculty of Law, Assiut University, 2018.
- [23] Al-Daraji Ali Rasan, *The Theory of Aggravating Circumstances in Crime - A Comparative Study*, First Edition, Zain Legal Publications, Beirut - Lebanon, 2017.
- [24] Sorour Ahmed Fathi, *Constitutional Criminal Law*, Second Edition, Dar Al-Shorouk, Egypt, 2002
- [25] Hosni Mahmoud Naguib, *Explanation of the Criminal Procedure Code*, Dar Al Nahda Al Arabiya, Cairo, 2016.
- [26] Anwar Muhammad Sidqi Al-Masada and Dr. Bashir Saad Zaghoul, *Mediation in Resolving Criminal Disputes - A Comparative Analytical Study*, published research, Journal of Sharia and Law, United Arab Emirates University, Issue 40, 2009.
- [27] Muawiya Muhammad Najib, *The Legal Concept of Mediation and its Mechanisms in Criminal Matters*, Mediation and Reconciliation Symposium in Criminal Matters, Ministry of Justice and Human Rights and the Higher Institute of the Judiciary, published on the website [www.ism-justice.nat.tn](http://www.ism-justice.nat.tn) 2013, visited on 15/9/2024.

- [28] Ubaid Osama Hassanein, Reconciliation in the Criminal Procedure Code: Its Nature and Related Systems, A Comparative Study, Dar Al Nahda Al Arabiya, Cairo, 2004.
- [29] Al-Zahry Moataz Al-Sayed, Mediation as an Alternative to Criminal Litigation - A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 2017.
- [30] Barak Ahmed Mohammed, Consensual Punishment in Islamic Law and Contemporary Criminal Systems, First Edition, Dar Al Nahda Al Arabiya, Cairo, 2010.
- [31] Abdul Hamid Ashraf Ramadan, Criminal Mediation and its Role in Ending Public Lawsuits - A Comparative Study, 1st ed., Dar Al Nahda Al Arabiya, Cairo.
- [32] Al-Fatlawi Salah Hadi Saleh, Criminal Danger and Its Impact on Determining Criminal Sanctions, PhD Thesis, College of Law, University of Baghdad, 2004.